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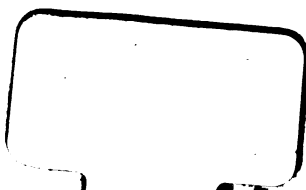


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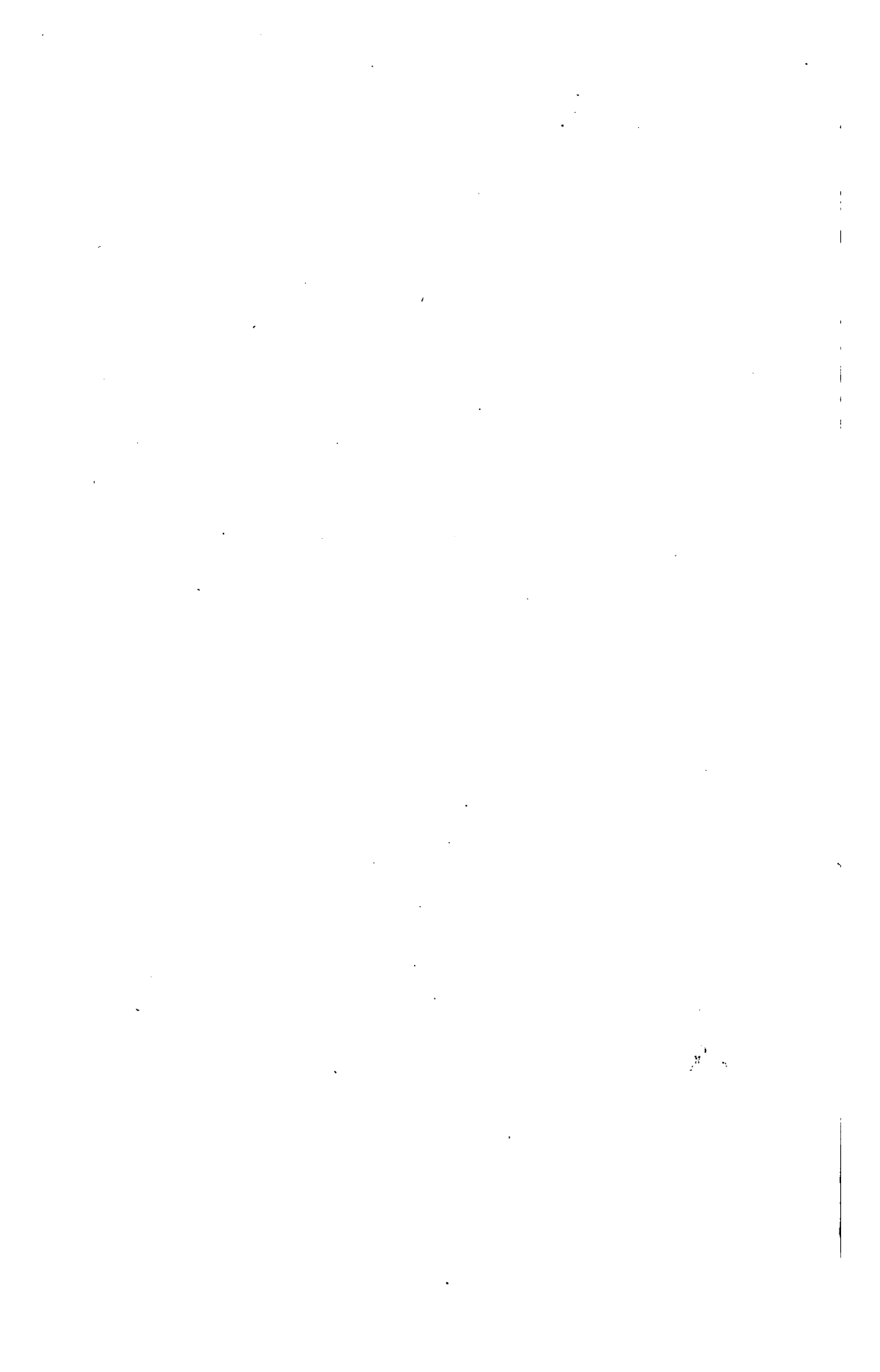
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"ROSE BOOK" OF CHILE

**COMMUNICATIONS EXCHANGED BETWEEN THE
CHANCELLERIES OF CHILE AND OF PERU**

REGARDING

**THE QUESTION OF TACNA AND ARICA
(1905 TO 1908)**

**OBSERVATIONS ON THE NOTE OF
HIS EXCELLENCY MR. SEOANE
OF MAY 8, 1908**

**WITH AN ABSTRACT AND PARAL-
LEL STUDY, BY BAILEY WILLIS**



**WASHINGTON
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APR 23 1920

COMMUNICATIONS EXCHANGED BETWEEN THE CHANCELLERIES OF CHILE AND PERU.

MINISTRY OF FOREIGN RELATIONS,
Lima, February 18, 1905.

MR. MINISTER: In the second clause of the treaty of peace and friendship which has just been entered into by the Republics of Chile and Bolivia a complete delimitation of boundaries is established, including, in the line from north to south, that of the territory of the Provinces of Tacna and Arica, and also part of that of Tarata.

In the third clause it is moreover agreed to connect the port of Arica with Alto de la Paz by a railroad to be constructed at the expense of Chile within the period of one year from the ratification of the treaty; it being likewise compacted that the execution of the work and its exploitation shall be determined by agreements, concessions, and special arrangements, as the commercial traffic through the port of Arica, according to Article III referred to, and Articles VII, X, and XI.

These pacts oblige my Government to direct to your excellency the present note, which has for its object the making of a formal protest and reservation of the rights of Peru in relation with these stipulations.

By the treaty of peace celebrated in Ancon October 20, 1883, Peru ceded to Chile perpetual dominion over the territory of the Province of Tarapaca, and the possession of Tacna and Arica during the term of ten years, dating from the exchange of ratifications of the treaty, which became effective March 28, 1884.

It is stipulated that—

at the expiration of that term a *plebiscite* shall, by means of a popular vote, decide whether the territory of the Provinces referred to is to remain definitely under the dominion and sovereignty of Chile, or to *continue* to form a part of the Peruvian territory.

That country to which the Provinces of Tacna and Arica shall remain annexed shall pay to the other 10,000,000 pesos in Chilean silver currency, or in Peruvian soles of the same standard and weight.

This pact is an essential part of the treaty of peace, so much so that it stipulates that even the protocol establishing the form of the plebiscite, and the terms and time for the payment of 10,000,000 pesos by the country which shall remain in possession of Tacna and Arica, "shall be considered as an integral part of the treaty."

By said pact, then, Peru ceded to Chile absolute propriety over the territory of Tarapaca, and the mere possession of the Provinces of Tacna and Arica, whose dominion Peru did not relinquish except on condition that their definite status should be submitted to a plebiscite which it was stipulated should be held 10 years from the ratification of the treaty, or March 12, 1894.

To safeguard more completely the rights of Peru from every stipulation affecting them in the treaty of peace between Chile and Bolivia, it suffices to consider that in the treaty of Ancon of 1883 one

of the contracting parties was the same Republic of Chile; and that the Republic of Bolivia, besides having had knowledge of and unusual interest in those acts, has always recognized the rights of Peru over the territories of Tacna and Arica. It is worthy of mention and very just to point out that, in the recent treaty of delimitation of frontiers and of arbitration, which was celebrated with Peru on September 23, 1902, and which was ratified on the 30th of January, that year, the following is laid down in the second clause:

The high contracting parties agree equally in proceeding according to the stipulations of the present treaty to the demarcation of the line which separates the Provinces of Tacna and Arica from the Bolivian line of Carangas, immediately after these are again under the sovereignty of Peru.

These being the facts, and the condition established by the treaty of Ancon respecting the territory of the Provinces of Tacna and Arica, they can not be modified or affected by pacts or stipulations in which Peru has not participated; but my Government considers, in view of the expressed stipulations of the treaty of peace celebrated by your excellency's Government with that of Bolivia, that its imperative duty in the representation and defense of the national interests obliges it to renew expression of its inalienable rights.

The demarcation of frontiers, construction and exploitation of railroads, conditions of free mercantile traffic, obligations and concessions which might affect the territories and their seigniorial rights, are acts of dominion in the exercise of full and absolute disposition of property and sovereignty which belong by indisputable international and civil law to the lord and master, and not to the possessor, or mere occupant, which is the status of Chile in the territories of Tacna and Arica.

To make these acts binding, it was necessary that such arrangements should have been made in agreement with Peru, or that the plebiscite to which the treaty of Ancon submitted them should have resulted in favor of Chile.

Neither the one nor the other thing has occurred, so that my Government finds itself obliged to declare that Peru does not accept or recognize these arrangements in which she has had no part; that they are not, for that reason, binding in any sense, and that they can not modify the legal status of the territory of Tacna and Arica, over which Peru continues to hold dominion, Chile being merely an occupant and holder, whose legal title terminated 10 years ago when the plebiscite to which the treaty of Ancon refers should have been effected.

It would certainly not be necessary for my Government to make these declarations and reservations were not said Provinces in an irregular and anomalous situation which it is not longer possible to maintain.

In fact, the time stipulated in the treaty of Ancon, March 28, 1894, for deciding by plebiscite the definite status of the Provinces of Tacna and Arica has expired, and the plebiscite, nevertheless, has never been held, in spite of the fact that there was proclaimed on the 16th of April, 1898, the protocol for its execution, which was an integral part of the treaty of 1883.

This protocol, being approved by both Governments and by the Congress of Peru and the Senate of Chile, the Chamber of Deputies

of this country, without itself pronouncing upon the pact, agreed that there might be arranged directly between the two Governments the points which ought to be resolved by arbitration, with the purpose of fulfilling article 3 of the treaty of Ancon, so that it devolved upon the Government of your excellency that it should initiate appropriate action, not, however, initiated to this day.

The question of Tacna and Arica is not a matter over which two countries may freely debate as they believe most convenient to their interests. It is an international matter, governed by a treaty binding on both nations which are parties to it and which both sealed with their good faith. From whatever consideration of convenience one may endeavor to contemplate it, there supervene the severe precepts of justice and imperious respect for contracts entered into, which it is not possible to violate without the gravest offense to law, to civilization, and to the respectability of nations.

The stipulations which the treaty of peace between Chile and Bolivia contains, referring to the Provinces of Tacna and Arica, make it even more impossible to elude the immediate celebration of the plebiscite contained in the treaty of Ancon, since it is inconceivable that this should not be fulfilled, or that one of the parties should adjust with a third party which depend upon the definite status of those territories, which the plebiscite established in said peace pact of October 23, 1883, ought to determine.

Your excellency well knows with what persevering, honorable, and arduous purpose the Government of Peru has undertaken, on its part, to effect the plebiscite in the Provinces of Tacna and Arica. It can never be imputed to my Government that it has not maintained this purpose whose realization is imperatively demanded by justice and the high interests of both countries, committed, on their national honor, to the fulfillment of the treaty.

Meanwhile there has been created in Tacna and Arica a unique international situation, since the history of political relations between nations furnishes no precedent for a territory submitted by a public and binding treaty between two countries to a plebiscite which remained, nevertheless, in the power of one of them after the expiration of the time fixed for the expression of the popular will which should definitely decide its fate.

Such a situation, anomalous and singular, is contrary to the treaty of Ancon; and obstructs Chile after the expiration of the 10 years of precarious possession which this treaty gave to her over the Provinces of Tacna and Arica, from modifying in whatever form the condition of that territory and from contracting obligations and public agreements which could affect them, even depriving her now of the status of possessor, which before the law does not exist when there is no legal title to sustain it.

I ought likewise to protest that the demarcation of frontiers contained in the treaty of peace between Chile and Bolivia delimits part of the territory of the Province of Tarata, which Chile unjustly occupies and continues to retain.

To the stipulation in the treaty of Ancon concerning the Province of Tacna, there could never be applied territories which in their political and geographical demarcation constitute the Province of Tarata, to which in nowise does the treaty refer.

Those territories are not included, in any event, within the line fixed by the source of the River Sama, which the treaty of Ancon points out as the northern boundary of the Province of Tacna, from its rise in the Cordilleras bordering upon Bolivia to its entrance into the sea, since the true origin of this river is indisputable, as the Government of Peru has presented in constant remonstrances on this point which it has placed before your excellency.

The undersigned entertains no doubt that the rectitude of your excellency and your Government must recognize these facts and agree with mine that the stipulations of the treaty of peace and friendship ratified between the Republics of Chile and Bolivia can not modify the status of the territory of the Provinces of Tacna and Arica, under the treaty of Ancon; and will accept, on the other hand, that whatsoever pacts may be adjusted respecting these Provinces, such pacts can in no sense bind Peru, she not having been a party to such arrangements, nor can they affect her territorial rights over the Provinces of Tacna, Arica, and Tarata.

With assurances, Mr. Minister, of my highest and most distinguished consideration.

J. PRADO Y UGARTECHE.

To His Excellency the MINISTER OF FOREIGN RELATIONS OF THE
REPUBLIC OF CHILE.

MINISTRY OF FOREIGN RELATIONS,
Santiago, March 15, 1905.

MR. MINISTER: There has been received in this ministry the communication of your excellency dated February 18 last, which your excellency states has for its object the making of a "formal protest and reservation of the rights of Peru" under the stipulations contained in the second and third clauses of the treaty of peace and friendship of October 20, 1904, the first of which refers to the demarcation of frontiers between Chile and Bolivia, and the second to the construction of a railroad which will unite the port of Arica with Alto de la Paz.

Your excellency founds your protest on the fact that, by the pact of Ancon—

Peru ceded to Chile absolute propriety over the territory of Tarapacá, and the mere possession of the Provinces of Tacna and Arica, whose dominion Peru did not relinquish except on condition that their definite status should be submitted to a plebiscite which it was stipulated should be held 10 years from the ratification of the treaty, of March 12, 1894.

Your excellency adds that—

The demarcation of frontiers, construction, and exploitation of railroads, conditions of free mercantile traffic, obligations and concessions which might affect the territories and their seigniorial rights, are acts of dominion in the exercise of full and absolute disposition of property and sovereignty, which belong by indisputable international and civil law to the lord and master, and not to the possessor, or mere occupant, which is the status of Chile in the territories of Tacna and Arica.

This is not the first time that the Government of Peru has deemed it necessary to protest against the political and administrative measures taken by Chile in the territories of Tacna and Arica; and as, on the one hand, your excellency's note is founded on considera-

tions analagous to those which are adduced in said protests, and, on the other hand, your excellency is careful to state that your principal object is that of testifying that the treaty of peace and friendship to which your excellency refers is binding only on the Republics of Chile and Bolivia and not on Peru, a fact which my Government has always held in doubt, I can well limit myself to reproducing the replies which this ministry has opportunely given to the Peruvian chancellery.

Nevertheless, given the good will which exists in my country to cultivate friendly relations with the country of your excellency, I take pleasure in setting forth that the acts which your excellency protests against are not contrary to the treaty of Ancon, but that, on agreeing to its execution, the Government of Chile has proceeded in the exercise of the indisputable rights which that treaty confers upon it.

Your excellency contends that the pact of Ancon reserves to Peru dominion over Tacna and Arica and confers upon Chile only a mere precarious occupation, and, going on to refer to the rules of international and civil law, adds that Chile could not execute in said territories any act of dominion or sovereignty without the acquiescence of Peru. It is not difficult to demonstrate that this interpretation does not conform either with the letter or with the spirit of the pact mentioned.

In fact, your excellency is not unaware that a portion of territory belongs to the State which, with sufficient title, has the ability to occupy it and subdue it to its authority and legislation, and as the third article of said treaty establishes that the territory of the Provinces of Tacna and Arica "will continue possessed by Chile and subject to Chilean legislation and authority" it is evident that Peru ceded to Chile complete and absolute sovereignty over these Provinces, without any limitation as to its *exercise*, and limited only in its *duration* by the holding of a plebiscite, which should be called after 10 years had passed, dating from the ratification of that treaty, as it states.

The period of 10 years which the treaty of Ancon establishes had no other object than to insure to Chile a minimum of time in the exercise of sovereignty; but it in no manner signifies that within that period there ought necessarily to have been a consultation of the popular will. This point has been considered in previous communications which are in the possession of the Peruvian chancellery. In those communications it has been shown likewise that the delay in calling the plebiscite is not attributable in Chile.

"At the expiration of that term," adds article 3, "a *plebiscite* shall, by means of a popular vote, decide whether the territory of the Provinces referred to is to *remain indefinitely* under the dominion and sovereignty of Chile, or to continue to form a part of the Peruvian territory."

In order that this territory may remain definitely under the dominion and sovereignty of Chile, it is necessary that this country should have temporarily exercised and enforced said rights. The word *continue*, which your excellency underscores in your communication, does not refer to the situation prior to the treaty but to that which might come to pass after calling the plebiscite. Otherwise

there would exist a contradiction in the terms of the third article into which those who edited it could not have fallen.

The rights of Chile and Peru with respect to the Provinces of Tacna and Arica, such as are defined in the treaty of Ancon, are, then, quite different; those of Chile are actual and plenary, but not definite; those of Peru are merely fortuitous.

The weight which my Government gives to article 3 of the treaty of Ancon takes into account not only its explicit terms but also the recent declarations which the Government of your excellency has made to a friendly State.

The second article of the treaty of delimitation of boundaries celebrated between Peru and Bolivia the 23d of September, 1902, and ratified the 30th of September, 1904, which your excellency so opportunely transcribes in the note I am replying to, speaks thus:

The high contracting parties agree equally in proceeding according to the stipulations of the present treaty to the demarcation of the line which separates the Provinces of Tacna and Arica from the Bolivian line of Carangas, *immediately after these are again under the sovereignty of Peru.*

Your excellency's Government recognizes, for the same reason, expressly, in this treaty that the Provinces of Tacna and Arica are not actually under the sovereignty of Peru, and, what it is important to recognize in implicit form, that this sovereignty is exercised by Chile. If therefore the united rights which territorial sovereignty carries with it are considered, your excellency will understand that the protest which you formulate is not in accord with a recognition as categorical as it is spontaneous.

It is true that your excellency contends in various parts of your communication that Peru has conserved the dominion of those territories, and that it "continues to hold dominion over them." But your excellency is doubtless not unaware that the traditional doctrine of dominion or propriety which a State exercises over the territory subject to its jurisdiction tends to disappear absolutely from modern international law, and that it applies only in civil law, which does not govern relations between States. On the other hand, even within that doctrine, it is well known "that to territorial sovereignty belongs exclusively dominion over the whole extension of its possessions and that only from this point of view and considering alone the international situation of the State can it be said that it is the proprietor of its territory."

The convention celebrated between Peru and Bolivia shows, besides, that the latter Republic has taken into account the international situation of Tacna and Arica in celebrating two treaties relative to the delimitation of their boundary; one with Chile, the country which actually exercises sovereignty and dominion in those territories, and the other with Peru, which has only a mere prospect of exercising them. In the treaty celebrated with Chile the boundary which the two countries shall fix between themselves in the Provinces of Tacna and Arica is stipulated; in that celebrated with Peru, it is declared that both countries shall fix, by common agreement, that boundary in case said Provinces return to the sovereignty of Peru. The prospects of Peru are, then, carefully contemplated in said treaties.

Your excellency has also esteemed it opportune to call the attention of this Government to the fact that—

the history of political relations between nations furnishes no precedent for a territory submitted by a public and binding treaty between two countries to a plebiscite which remained, nevertheless, in the power of one of them after the expiration of the time fixed for the expression of the popular will which should definitely decide its fate.

It is scarcely permissible that I should set forth to your excellency that the precedents which you invoke in this paragraph do not exist, because all the international plebiscites held within the last two centuries have been but hypothetical measures or for the purpose of sanctioning an annexation already made, as those called during the French Revolution, or to attenuate an annexation or cession already made, as those which have taken place in the nineteenth century. The result, as a natural consequence, has always been favorable to the annexing country, which never yet saw in these plebiscites any discussion of its rights but only a mere formality.

It is not out of place to remind your excellency that the treaty of Prague, celebrated between Prussia and Austria on August 23, 1866, stipulated a plebiscite in favor of the Danish population of Schleswig, occupied by Prussia; but this stipulation remained without effect according to subsequent arrangement, because the Austrian Government, appreciating the situation, and not because they or the Danish population wished it, but in conformity with the reality of things, recognized the annexation of that portion of territory to Prussia as an act consummated.

The conclusion which may be clearly drawn from the diplomatic precedents on plebiscites is that their stipulation has never had other object than to bring about, in a form respectful to national sentiment, a cession or annexation of territory.

Moreover, your excellency is not unaware that modern diplomacy has conceived other methods for covering territorial annexations or cessions. Within the limits of this communication an analysis of these procedures would not be possible, nor would it be possible to review the numerous cases in which they have applied.

Nevertheless, it is not too much to bring to mind that in some of these cases, where the cession was apparently limited to the simple occupation and administration of territory, it has been considered that there was implied a cession which has authorized the occupying State to exercise the rights inherent in dominion and sovereignty.

I do not assume, certainly, to place these cases on a parallel with the situation which exists in the territory of Tacna and Arica, respecting which there is a treaty conferring expressly upon Chile complete and absolute sovereignty as regards their exercise, and limited only by an eventuality.

These facts and precedents justify the declaration which I made to your excellency that the Government of Chile refuses to admit that the Government of Peru is unaware of its indisputable right to exercise dominion and sovereignty in the Provinces of Tacna and Arica pending the decision of a plebiscite, not even yet called by reason of circumstances which the chancellery has already had occasion to analyze and reveal to the Government of your excellency, as to whether these Provinces shall be reincorporated or not in the territory of Peru. Chile can now fulfill, and will fulfill even more than in the

past, the duty of giving these Provinces the largest measure of material and moral well-being, and of implanting in them all the means of order and progress which may be necessary to guarantee the unity of sentiment and interest which permit her, under the solemn dispositions of the treaty of Ancon and without changing or violating the prospects of Peru, to acquire definitely the dominion and sovereignty over Tacna and Arica.

Finally, I ought to express to your excellency that, to the firmness with which I maintain the incontrovertible rights of my country, it gives me pleasure to add the sincerity with which in the name of my Government I invite that of your excellency to procure an agreement based on the interest and convenience of both Republics and inspired by the same purposes with which Chile has placed an end to all questions with reference to other State boundaries. In this field, which is that of reality in the life of the peoples, the agreement between Chile and Peru would be immediate, absolute, and lasting. Your excellency may feel assured that if the Government of Chile aspires to this definite arrangement, it is because it desires to march in harmony with the course imposed upon it by events and by being fully convinced that moral, political, and economic solidarity is the fundamental law of nations.

With assurances, Mr. Minister, of my highest and most distinguished consideration.

LUIS A. VERGARA.

To His Excellency the MINISTER OF FOREIGN RELATIONS OF PERU.

MINISTRY OF FOREIGN RELATIONS,

Lima, April 25, 1905.

Mr. MINISTER: The secretary of the legation of Chile has delivered to this office the note of your excellency of March 15, last.

Your excellency recognizes in it that the stipulations of the treaty of peace and friendship celebrated between Chile and Bolivia October 20, 1904, giving rise to the note of protest of my Government of February 18, last, do not bind or affect Peru in those rights which, according to the treaty of Ancon, she maintains over the Provinces of Tacna and Arica; but, at the same time, your excellency has believed it fitting to adduce diverse considerations to prove that in said Provinces Chile exercises temporary dominion and sovereignty, sustaining thus theories which are in disagreement with the letter and the spirit of the treaty of Ancon, and with the fundamental principles of international law.

By its own nature, sovereignty, which is the supreme faculty of peoples to establish and govern themselves and proceed free and independent; and dominion, which is the right likewise of free and absolute disposition of property, representing together the fullness of nationality, of political government, and of territorial rights, are incompatible with a provisional status, precarious, for a fixed time, at whose expiration, in accordance with an international pact, sovereignty and dominion shall be determined.

In the exercise of sovereignty, a people has not the authority to decide on nationality and seigniorial rights, nor in the exercise of dominion that of disposing of territorial property, an authority

which can not exist while the nationality and ownership of the territory are dependent upon those to whom these belong.

There are examples of limitation in the amplitude of the rights of sovereignty and dominion, as in the ancient fiction of semisovereign States, and in the condition of protected and tributary States; but absolute sovereignty and dominion can not be given for a limited time and in uncertain status, since the character of firmness and the effects of perpetuity constitute essential attributes of those rights, whose subsistence and exercise are irreconcilable with a State in which the nationality, to which corresponds sovereignty, and the personality of the owner, to which pertains dominion, are subject to the result of a projected plebiscite.

Neither can it be sustained, before public law, that sovereignty and dominion can be acquired, except in cases where force is employed, without cession from the sovereign and owner of the territory.

To Peru belonged the Provinces of Tacna and Arica.

By the treaty of Ancon of October 20, 1883, she ceded to Chile perpetually and unconditionally the Province of Tarapacá.

Respecting the territory of the Provinces of Tacna and Arica, she entered into a pact, which, according to the text, provided that it would—

remain in the possession of Chile, and subject to Chilean laws and authorities, during the term of 10 years, to be reckoned from the ratification of the present treaty of peace.

At the expiration of that term a plebiscite shall, by means of a popular vote, decide whether the territory of the Provinces referred to is to remain definitely under the dominion and sovereignty of Chile, or continue to form a part of the Peruvian territory.

This pact is entirely clear and precise and can not give rise to any doubt.

The territories of Tacna and Arica were at that time under the military occupation of Chile, with the character and effects of simple tenancy and provisional administration which the law of nations uniformly points out.

In the treaty of Ancon it is expressly agreed that during a certain period that possession should be continued, but sovereignty and dominion, which the treaty so carefully stipulated with respect to the Province of Tarapacá, were not ceded, reservation being made in regard to Tacna and Arica that the result of the plebiscite at the end of 10 years expired March 28, 1894, should decide definitely the fate of those Provinces.

It is possible to comprehend the particular within the general, the accessory within the principal, the accidental within the substantial, but it is not possible, in contradiction to the order of ideas and of every legal principle, to proceed on the contrary and comprehend sovereignty and dominion as a corollary of possession and its effects, which was the only thing stipulated in the treaty of Ancon for 10 years of Chilean occupation in Tacna and Arica.

Your excellency, with the intention of supporting your theory of sovereignty and temporary dominion, invokes the recent treaty of delimitation of boundaries celebrated between Peru and Bolivia September 23, 1903, in which it is agreed:

ARTICLE 2. The high contracting parties agree equally in proceeding according to the stipulations of the present treaty to the demarcation of the line which

separates the Provinces of Tacna and Arica from the Bolivian line of Carangas, immediately after these are again under the sovereignty of Peru.

The cultivated judgment of your excellency will easily appreciate that in said treaty it is declared that the sovereignty and dominion of the said Provinces belong to Peru, and that she has not renounced them, although recognizing that their exercise was in suspense, as a matter of fact, in consequence of the treaty of Ancon.

In the political order, as in the civil, the exercise of a right could, in sundry cases, be found in suspense, but the right in itself does not disappear except for causes which legally extinguish it or transfer it.

On the other hand, a right can not be exercised unless it is possessed either by a proper title or by transfer from the possessor and assigned to the one who is to exercise it.

To the incontrovertible force of these principles of universal law is not opposed the fact that, pending decision of the status of the Provinces of Tacna and Arica, they should be subject, in internal and civil order, to Chilean authority and legislation, which is the true and only condition established by the treaty of peace of 1883 in the Provinces of Tacna and Arica during the 10 years of possession which were granted to Chile, a title which legally ceased after the expiration of that period.

Your excellency insinuates that in the treaty of Ancon the date of the plebiscite is not definitely fixed; but there is no doubt but that in the treaty it is stipulated that the plebiscite shall be held at the expiration of 10 years from the occupation, or March 28, 1884, it not being material to indicate the date, since it is exactly determined, commencing, says the agreement, with the ratification of the treaty.

When the treaty of Ancon was negotiated and approved, and always afterwards, the Chilean chancellery understood it so, invariably, without any adverse opinion ever having been sustained.

Finally, your excellency has thought it worth while to recall cases which you hold as covering territorial cessions by means of plebiscites, but whatever may be your estimation of them, they are not illustrative of this situation, entirely distinct and unique, which is categorically and faithfully resolved in the treaty of Ancon.

In the peace negotiations between Chile and Peru which preceded the treaty of Ancon, Chile demanded, besides the cession of Tarapaca—whose importance and riches had surpassed all calculations—an indemnity in money of 20,000,000 pesos, which was not accepted by Peru.

The Chilean negotiators then proposed to compensate her by the sale and cession of the territory of the Provinces of Tacna and Arica, to which also the Peruvian negotiators refused absolutely to assent.

As a final result, and without any other intelligence respecting it, an agreement was reached in the stipulation of the treaty of Ancon for the continuation of said territories in the possession of Chile for 10 years, at the expiration of which a plebiscite would be held to determine, by popular vote, the definite sovereignty and dominion, with the obligation by the country in whose favor it may be decided to pay 10,000,000 pesos to the other contracting party.

These are the true antecedents of those negotiations, and are amply confirmed in the memorial presented by the Chilean chancellery to the National Congress in 1883, a document of force and authentic

worth for your excellency, in which, on submitting the treaty to the approbation of the Chilean Congress, was given the detailed history of said negotiations, ending with these words:

If the result of the plebiscite shall return the region of Tacna and Arica to the dominion of Peru, Chile will loyally and honorably respect the decision of those peoples, limiting herself to receiving a pecuniary compensation of 10,000,000 pesos, which, added to the revenue we would have procured anticipating the occupation of those territories for 10 years, would exceed, without doubt, what we claimed on the basis proposed in 1881 and 1882.

Peru, then, by explicit and categorical stipulations, ceded directly and definitely the very valuable Province of Tarapaca; but respecting Tacna and Arica she accepted no other stipulation than that expressly contained in that international pact, under the public and inviolable faith of those countries which celebrated it.

Thus your excellency will recognize, although deducing from said treaty the equivocal interpretations which my Government finds itself obliged to rectify by the present note.

Disagreement on so important and delicate a matter demonstrates even more the imperious necessity which I expressed to your excellency in my previous communication of February 18 last of fulfilling the treaty of Ancon, and holding the plebiscite agreed to in it, which ought to have been done 10 years ago.

Your excellency states that the delay can not be attributed to Chile. This chancellery maintains that it is very easy to verify the fact that Peru has always been disposed to the immediate execution of the plebiscite stipulated in said pact.

But your excellency appreciating, at all events, the absolute necessity and justice of putting an end to this anomalous and irregular international situation invites my Government to negotiate and definitely conclude this most important matter.

It is very pleasing to the Government of my country to accept the invitation of your excellency, with the object of negotiating the execution of the treaty of Ancon respecting the Provinces of Tacna and Arica, it being at the same time convinced that nothing will contribute more toward binding the cordial relations which your excellency states should unite American peoples for the realization of their united destiny than the faithful fulfillment of international agreements and the ties of reciprocal interests.

Please accept once more the assurances of my high and distinguished consideration.

J. PRADO Y UGARTECHE.

To His Excellency The MINISTER OF FOREIGN AFFAIRS,
Santiago, Chile.

MINISTRY OF FOREIGN RELATIONS,
Santiago, June 5, 1905.

Mr. MINISTER: I have received the communication of your excellency of April 25 last, designed to rectify the mistaken interpretations into which, according to your excellency, I have fallen in my note of March 15.

Naturally respecting the opinions of your excellency, allow me to call your attention to the circumstance that the doctrines expressed by this chancellery, and which your excellency rectifies, are not only

in accordance with the principles of international law, but also with the practical application of these principles which has invariably been made by European States.

As for the rest, my Government felicitates itself that your excellency has accepted the invitation which I permitted myself to make in my note to which you refer with the purpose of procuring an agreement based on the interest and convenience of both Republics, and inspired by the same purposes with which Chile has disposed of all questions with the rest of the contiguous States.

With the assurances of my highest and most distinguished consideration.

LUIS A. VERGARA.

To His Excellency The MINISTER OF FOREIGN RELATIONS OF THE REPUBLIC OF PERU.

[Confidential.]

No. 3.

MINISTRY OF FOREIGN RELATIONS,
Santiago, March 25, 1905.

Mr. MINISTER: The first interview which your excellency held with the undersigned served to formulate the desire of taking up immediately the solution of the problem concerning the definite nationality of Tacna and Arica, according to the dispositions of the treaty of peace signed in Ancon.

The undersigned permitted himself to offer a suggestion directed toward ascertaining beforehand if it would be more convenient to study in the first place the problem of Tacna and Arica or the distinct projects designed to create and promote friendly international ties, and declared that on his part he was inclined to take the latter course, as much because such has been the proceeding preferred by the Government of Chile in promoting the renewal of diplomatic relations between the two countries, as because this seems also to have been the thought of Peru in accepting the invitation of Chile for said renewal and in entering fully upon this path, celebrating a short time ago with our legation in Lima three conventions of distinct classes; and moreover because that seemed also to be the dominant note in Peruvian public opinion, judging by the publications of some of the organs of its press.

Your excellency states that for your Government the question of Tacna and Arica is of so vital importance that before it all others appear diminutive or simple in solution, and has the goodness to invite me formally to resolve the question to its simplest terms.

Notwithstanding this difference in the manner of considering what procedure would be most acceptable, I am pleased to testify that in the various conferences held with your excellency to date there has been perfect accord in the sense that it is for us an elementary duty to seek for adequate means to reestablish and guarantee between the two countries a relation of frank cordiality, convinced as we are that it will be fruitful in benefits for Chile and for Peru and would correspond to the dictates of historical sisterhood and the requirements of their full future development.

Seeking to harmonize the desires manifested by your excellency with the ideas which animate my Government, I have the honor to

state to your excellency that Chile and Peru would perform a practical, foresighted, and patriotic work in compassing the solution of the territorial controversy in a series of agreements tending to establish firmly the community of interests between the two peoples.

I had, as regards this, the honor to propose to your excellency a plan of negotiation which consists of various projects of agreement and whose execution would, in the judgment of my Government, satisfy the reciprocal desires for peace which predominate in both Republics.

Perhaps on account of having been presented with some vagueness, these propositions did not have the fortune to be understood with perfect clearness; as one is led to believe by the response of the Government of Peru which, as regards these propositions, your excellency has sent to me.

I propose in the present communication, in accordance with the announcement of your excellency, to make formal and precise the fundamental basis of said plan and thus to save it from the failures and errors inherent in the memory, as well as to set forth to your excellency and to your Government a concrete basis for deliberation.

Persuaded as my Government is that no chain binds more strongly the nations than that of community of interests, from which results the common welfare, it is of the opinion that Chile and Peru will not have made the work complete by only eliminating the hindrance which the question of Tacna and Arica opposes to the absolute cordiality of their relations and entertains the confidence that, linking the solution of this arduous problem with that of various others which by their nature are harmonious and of reciprocal profit, the solution will be greatly facilitated. The joint negotiations which I have the honor to outlined to your excellency embrace the following matters:

1. Arrange a commercial convention which shall grant exemption from customs to certain stated products of each country that are of use in the other.
2. Celebration of an agreement for the promotion of the merchant marine and for the establishment of a line of steamers at the expense or by the subvention of the two Governments, with the object of developing a coast trade.
3. Association of the two countries for the realization of their resources and their credit in joining the capitals of Santiago and Lima by railway.
4. Arrangement of the protocol for establishing the form of plebiscite stipulated for the determination of the definite nationality of Tacna and Arica.
5. Arrangement to raise the amount of indemnity which the country acquiring definite sovereignty over this territory shall give to the other.

I trust that your excellency and his intelligent and patriotic Government can not do less than find in the union of these proposals for agreement a proof of the sincerity of our desire to seek as well as to assure forever with Peru the greatest cordiality of relations; and can not do less than be persuaded that there is evident convenience in giving to the negotiation which we have in hand all the amplitude which I have drafted. Reduced to the mere organization of a plebiscite, it might well occur that the country which was a loser in its ex-

pectations of triumph might remain ill disposed, at least for a time, to maintain with the other the friendship which we desire. Let us at once be rid of every cause of subsequent disquietude. A negotiation in which it is attempted at the same time to eliminate existing difficulties and give guaranties of future cordiality will inspire, without doubt, greater confidence in its results.

In the very act of carrying out the plebiscite there will be felt the wholesome influence of a previous agreement between the Governments on the matters included in my proposition: In not arranging for the plebiscite alone, the voters would not arrive at the polls frightened lest their vote might engender new germs of estrangement; because they would have the assurance that its result, whatever it might be, would not retard the acquisition of any of the benefits of peace, which are already assured beforehand.

This combined negotiation, by consisting of diverse elements which complete and compensate each other, ought naturally to be considered as an indivisible one.

I need say but little in explanation or justification of the first and the second of these projects which constitute the proposed negotiation.

The free importation of its own products from one of the two countries into the other brings indisputable benefits; and in the present case the fundamental difference of zone between Chile and Peru gives origin to differences of production which perfectly allow of the reciprocal liberation from heavy customs of those products peculiar to each country; sugar, rice, Peruvian cattle, for example, and the cereals, wines, and fruits of Chile could under such favorable conditions find in the other country a most advantageous placement.

The development of trade navigation, apart from the gain which this industry in itself offers, will contribute directly to making commercial interchange possible and easy.

The construction of the remaining lines of railroad which are missing between the capitals of the two countries is in my opinion a work which imposes itself on the consideration of both Governments for many reasons, not only as a national convenience, but as of true continental interest and security. The Republics of Chile and Peru will contribute thus, in considerable proportion, to the realization of the Pan American Railroad, an indispensable element for securing the moral unity of America, and a palpable manifestation of the true sentiment which ought to inspire the foreign policy of all the Republics of the continent.

For the construction of the work the two Governments could contract jointly a loan with the work itself as security, or could contract for the construction with a certain interest on the capital invested guaranteed.

Naturally the obligation contracted would be for an identical sum by both States and to fix the amount the lowest estimate between the Peruvian and Chilean sections might be taken; all within a certain prudent maximum which would be fixed beforehand.

In reference to the protocol which will determine the conditions in which the plebiscite of Tacna and Arica would have to be held, I ought to be in this respect a little more explicit as I have been in the discussions held with your excellency on its possible basis.

But, before all, I deem it necessary to recall a fact related with the present negotiations which throws abundant light on the spirit which animated my Government when it opened the way, and which continues to animate it at present.

In March, 1901, the Government of Peru withdrew its legation accredited to Santiago and allowed four years to pass without reestablishing it and without manifesting in any form the purpose of doing so.

And, on the contrary, judging from the tone of certain documents emanating from her chancellery, Peru seemed inclined to maintain for an indefinite time that interruption of relations.

Nevertheless, this ministry, in charge at that time of my distinguished predecessor, Mr. Luis Antonio Vergara, in replying to the last of these documents, dated February 18, 1905, presented to the Government at Lima spontaneous and sincere words in behalf of a rapprochement, and he invited your Government to reestablish in our country its legation in order "to procure an agreement based on the interest and convenience of both Republics and inspired by the same purposes with which Chile has placed an end to all questions with reference to other State boundaries. In this field, which is that of reality in the life of the peoples," he summed up, "the agreement between Chile and Peru would be immediate, absolute, and lasting."

Your excellency must believe me that in referring to these facts it is far from my purpose to awaken unpleasant recollections. I mention them solely to testify authentically that my Government never, even in the days when Chile and Peru were more estranged, felt any weakening in her friendly sentiments.

If Chile had not been animated by this spirit, the diplomatic interregnum would have continued and there would have been on place for opening this negotiation, which I, for my part, have taken up with the well grounded hope that it will lead us to a satisfactory result.

Your excellency knows well that the treaty of 1883 on leaving to be determined by plebiscite the definite nationality of Tacna and Arica did not express what was to be understood by said plebiscite, nor did it fix the forms and manner of its execution. Naturally such omissions can not be attributed to forgetfulness on the part of the negotiators, but to an implicit recognition that the procedure agreed upon could not be other than that of the plebiscites incorporated in the History of International Law.

My Government, then, now desirous as before, of arriving at a friendly solution, would not be disposed to hold strictly to the rights which are accorded to it in the letter and the spirit of clause 3 of the treaty of Ancon nor to maintain itself exactly in the field in which publicists and diplomatic precedents place plebiscites, if on her part Peru will facilitate the arrangement and renounce her extreme pretensions, which will undoubtedly frustrate any solution.

It will not escape the intelligent judgment of your excellency that the right to vote has not in this case the purpose and significance which the constitution and the internal laws of each State attribute to the political suffrage. Its character is eminently international, as it treats of the determination as to which country belongs definite sovereignty over a portion of territory. There is no doubt, then, that

there ought to be called to exercise the rights of suffrage all the able inhabitants of the territory; not only the nationals of the one or the other country interested who have established residence in the territory and are free from all unfitness or incapacity, but also the foreign residents who are in a similar status.

In the plebiscite the will of the foreigners should be consulted as much because their right has been implicitly recognized in the treaty in employing the formula "popular vote" as because it is not equitable or reasonable to deprive them from participation in a consultation over the fate of the country where their interests are rooted, where they have established their family, and to whose prosperity they contribute in large part with fruitful and persevering labor.

My Government understands also that by the fact of exercising sovereignty in Tacna and Arica it devolves upon it exclusively to designate the personnel which ought to preside in holding the plebiscite, whether in the reception of voters or in the scrutiny of the ballots.

And with this motive it gives me pleasure to repeat to your excellency the most absolute assurances of the resolution which my Government has of adopting the means and formalities most adequate for the elimination of any cause for the least lack of confidence on the part of your excellency in order that the result may leave no margin for recriminations of any kind.

Entering a little into the details which are for your excellency a matter of preoccupation, I can say that it does not appear to me unfitting that our authorities, in constituting the electoral board, should give representation on it to citizens of Peruvian nationality and of other nationalities.

The project of agreement which I have the honor to propose to your excellency under No. 5 would stipulate an increase in the sum of money which ought to be paid to the other State, in the character of an indemnity, by the State in whose favor the plebiscite may result.

The undersigned considers that this would be one of the two most effective means of attaining his dominant purpose, which is the solution of this problem with the least possible friction.

The amount of this sum could be fixed between two and three millions of pounds sterling.

The periods, security, and conditions of its payment would be fixed of common accord in the form which shall be judged most simple, convenient, and secure.

A form which in my judgment would render the financial operation considerably smoother would be that of combining the payment of the indemnity with that of the debt which would be contracted for the construction of the international railway.

When applied to this purpose the amount paid would lose the character of compensation which the treaty of Ancon holds; it would tend to smooth over the memories of our past discords and serve to emphasize only the purpose of making indissoluble the union of our two countries.

I congratulate myself, most excellent sir, on being able to register here my gratification in the noble attitude of high-mindedness and faithfulness which your excellency has invariably maintained during our deliberations.

To correspond to it worthily I have at all times endeavored to reveal to your excellency with the most absolute sincerity and exactitude the true sentiments which the people and Government of Chile entertain for Peru, and I flatter myself with the belief that your excellency will be convinced that there reigns in Chile an ardent desire to discover and adopt a formula which, without unfair sacrifices, may permit her to reconcile the fulfillment of these duties—that of establishing again the old harmony between Chile and Peru with that of safeguarding the vital interests of the fatherland.

On the present occasion, will your excellency permit me to close by expressing the hope that your excellency's Government will coincide with mine in the conception that the union of arrangements here proposed takes into consideration the convenience of the two countries, is capable of dissipating all lack of confidence between them, and tends to open to them a new era of prosperity, reestablishing the brotherhood of those times in which the Chilean and Peruvian banner guided our armies and fleets, whether to the conquest for independence or for its defense.

I take this occasion to renew to your excellency the assurances of my most distinguished consideration.

F. PUGA BORNE.

To His Excellency DR. WILLIAM A. SEOANE,
*Envoy Extraordinary and Minister Plenipotentiary
of Peru and Chile.*

LEGATION OF PERU IN CHILE,
Santiago, May 8, 1908.

MR. MINISTER: I have the honor to reply, according to the instructions received from my Government, to the communication of your excellency of March 25 last.

Aside from the conception formed of the proposals which it contains, my Government has received with especial pleasure the friendly spirit which inspired said proposals; and I have been charged with the duty of setting forth to your excellency at the same time with what ardor Peru desires to see eliminated once for all the difficulties which oppose the fraternal rapprochement of Chile.

In that communication, with the purpose of avoiding errors or elapses inherent in the faultiness of memory and giving to my Government a concrete basis for deliberations, your excellency has the goodness to reproduce the five fundamental points of the project stated verbally in our first interview, considering them as a proposition one and indivisible.

These points, including that relative to the still pending plebiscite which, in observance of the treaty of Ancon, should have been held in 1894, contemplate adjustments of a commercial character, with exemptions of customs in favor of certain products of each of the two Republics which are consumed in the other; development of the merchant marine and the establishment of a line of steamers; construction of a railroad which shall unite the capitals of Lima and Santiago; and the increase of the indemnity payable by the country which shall acquire definite sovereignty in the territories of Tacna and Arica, which amount, not specified in our conference, your excellency now fixes between two and three million pounds sterling.

The undersigned ventures to observe that the response transmitted to which your excellency alludes confines itself exclusively to the suggestion of possible direct arrangements; whereas in that which concerns said territories, the Government of Peru has preferred always, and continues to prefer, the strict observance of that pact.

It is not, then, because there has been any vagueness in your excellency's clear exposition, or insufficient perspicacity in its perception, that the chancellery of Peru has laid aside that series of heterogeneous agreements, which I duly transmitted as your excellency formulates them, but because, by reason of the judgment of which I am the expounder, it was thought best to take up at once the solution of the plebiscite problem, avoiding complications.

The invitation of your distinguished predecessor, Mr. Luis Antonio Vergara, for the renewal of diplomatic relations in order that there might be procured "an agreement based on the interests and conveniences of both Republics" does not lay upon Peru the direct arrangement nor exempt Chile from the formality of a plebiscite.

After the agreement of the Chilean Chamber of Deputies, which, on returning in 1901 the Billinghurst-Latorre Protocol already approved by the Senate, recommended solely to the executive power "new diplomatic proceedings for the fulfillment of the third clause of the treaty of Ancon;" after hearing the declarations of His Excellency President Mott at the time of receiving my credentials; and above all, in view of said pact, with the force of international law, having stipulated solely and exclusively the said plebiscite, I am loth to believe, Mr. Minister, that your excellency attributes force and restrictive power to those words of mere desire in the same communication in which, among other topics, figures that of the plebiscite protocol.

The plebiscite, being entirely of a political character, has no relation with commerce, with merchant marine or steamship lines, with railways, or even with an indemnity.

These points, in themselves unconnected and independent of the treaty of Ancon, can be negotiated apart, and will receive special attention from my Government after the execution of the plebiscite protocol; that is, when there can be eliminated from the relations of Peru and Chile the problem of Tacna and Arica, whose subsistence, by being referred to the fulfillment of a solemn pact, is not susceptible of union in the celebration of other treaties.

With identical judgment, in 1893, when the plenipotentiary of Chile, Mr. Vial Solar, received proposals somewhat analogous with the present ones of your excellency, he responded:

The very nature and importance of this matter counsel, in the judgment of my Government, that it shall not be treated out of its natural field, or be complicated with a negotiation of so distinct a character as is that which relates to the definite nationality of the counties of Tacna and Arica.

My Government, in consequence, will always gladly accept whatever indication manifested by your excellency which has for its object the opening of negotiations for the establishment of a system of reciprocal commercial exemptions, and will improve every occasion for initiating, on its part, steps to that effect before the great Government of Peru; but it considers at the same time that there is no reason for treating this matter in connection with questions related to the definite possession of the counties of Tacna and Arica.

On solemn occasion I had the honor of setting forth that, in spite of the time elapsed, in said districts there exists and is transmitted,

as strong as in the epochs of sacrifice and glory, the sentiment of nationality, to whose ardor corresponds that of the other sections of the Peruvian fatherland.

While such a situation lasts, it is inevitable that there will exist the hindrance to entire cordiality, whether or not there be treaties in another sense, and being what they may the individual sympathies born under the ardor of the missions of peace.

When the plebiscite has been consummated, there is no occasion to fear that the country deprived of its expectations will be ill disposed to reestablish the friendship of other times, because the correct suffrage alone is responsible for the popular grouping which emanates from it and not the assuming Republic.

Far from maintaining it, ill feeling would disappear with the cause of the unhappy relations between our respective countries, and the country not favored by the plebiscite could not do less than resign itself to the consequences of what was deliberately stipulated, with all the more reasons, inasmuch as statesmen are guided not only by patriotic sentiment but principally by traditional national interests in so far as they do not trample upon the rights of others.

It is for considerations such as these, Mr. Minister, that on becoming acquainted with the plan of your excellency, I expressed in our first interview, as your excellency is so good as to recall, that for my Government the question of the plebiscite is of such importance that before it all others appear of second rank, adding that before asking instructions for the discussion of those annexed agreements I considered it indispensable that we put ourselves in accord in regard to the essential, or to the formalities which would guarantee the freedom of suffrage and the faithful scrutiny of votes.

Your excellency reproducing by writing your verbal exposition, I can only repeat the answer, in spite of the keenest desires to accede to your wishes, and I beseech your excellency that you be reconciled to settling later such formalities concerning the other points, whose consideration for the present I lay aside.

I ought to except, nevertheless, the reference to the amount of the indemnity which the country acquiring definite sovereignty in the territories shall give to the other, an amount which, in place of 10,000,000 soles, your excellency would raise to two or three million pounds sterling, or double or triple the sum laid down in the treaty of Ancon.

In this respect, it becomes me to make to your excellency a fundamental observation. The steps which my Government has authorized me to place before your excellency have for their object the fulfillment, not the modification, of Article III of the treaty of peace of October 20, 1883. In such sense I have asked the negotiation of the protocol, which ought, according to said article, to establish the form of the plebiscite and the terms and periods on which there should be paid the ten millions by the country favored by the plebiscite. To suppose an increase of the amount of the indemnity fixed by the treaty is to alter it, breaking the unity and correlation which exist between all its clauses and making more onerous for Peru the execution of the only stipulation pending after Chile has improved all her other advantages.

As I had the honor of declaring to your excellency, my Government would consent to a variation from the dispositions of the pact

of Ancon only to insure the immediate and definite reincorporation of the Peruvian Provinces of Tacna and Arica into the national territory.

Peru has confidence that the plebiscite would result favorably to her if carried out according to the legal precepts governing such institutions, and I believe, if your excellency will excuse my frankness, that there also exists in Chile concerning this result the conviction already revealed by some of her conspicuous statesmen, who confess the futility of almost a quarter of a century of arduous work in "Chilenization." If it were not so, not many of your excellency's predecessors would have postponed the procedure by interposing unacceptable conditions, and neither would your excellency have spontaneously proposed such increase in indemnity.

The country which has confidence in its triumph is not interested in a pecuniary standard greater than that duly agreed upon.

That unexplained quantity would be considered as a new sacrifice imposed to-day by a war which ended 25 years before, or as a spur to representatives in the plebiscite protocol for paving the way to concessions which would be an abandonment of their rights; or to a fraudulent sale of Tacna and Arica, with the disgrace of ignoring natives without whose agreement territorial dismemberment is unlawful, and contrary to the unanimous aspirations of public sentiment in Peru.

Such possible hypotheses being erroneous, and my Government not discerning any cause whatever for the modification of the treaty originating these negotiations, I must in its name declare that the said proposal is not accepted.

As to the agreement on the said protocol, I must at least pause with the disinterestedness which your excellency is good enough to acknowledge, in the examination of the three points referring to a simulated cession, direction or presidency of the plebiscite, and voters, which your excellency combines into one.

Your excellency assumes that, according to modern precedents, the plebiscite incorporated in the History of International Law constitutes a simulated transfer.

That point, argued verbally by your excellency, is the most recent in the many conferences originated by the third clause of the treaty of Ancon.

In ancient legislation, an essential and characteristic element of the plebiscite consisted of the popular will, as an expression of sovereignty.

In the light of the principle of liberty, the French Revolution of 1789 condemned conquest imposed by arms and reestablished that democratic practice as the only justifiable basis for changes in the existence of States.

Thus brought into the international field, plebiscites, whether in favor of France as the one held in Avignon in 1791, or in favor of Italian unity as in 1848, and all the rest, invariably invoke as a fundamental and legal title the consultation of the people.

In practice many times it has been brought into ridicule nor has the vote been allowed to escape the effect of brutal coercion and fraudulent manipulation. Hence the reiterated triumph of the annexor.

But compulsion is not a legal factor. Rather it is an annulling cause.

The historical precedents in which it has been exercised demonstrate that, with the apparent object of obtaining success by preparation beforehand, there have been abuses, such as exist sometimes in local elections. But local elections are not called to legitimize the recorded abuses of internal politics, neither can it be deduced from plebiscites that in the sphere of public law they have been invalidated to be converted into the diametrically opposite concept of conquest; even though this may seem to be the case in all the documents mentioning the popular will as a condition of transfer.

In article 2 of said treaty of Ancon, Peru ceded to Chile perpetually and unconditionally the Province of Tarapaca.

As regards Tacna and Arica, article 3 stipulates that after the expiration of 10 years of Chilean administration a plebiscite will decide, by popular vote, whether the territory of the Provinces referred to shall remain definitely under the dominion and sovereignty of Chile or shall continue being a part of Peruvian territory.

If the negotiators of Ancon had imposed the same fate on the populations of Tacna and Arica as on Tarapaca, they would not have agreed on a popular vote for them while omitting it for Tarapaca.

Then it was not to simulate respect for the principle of liberty proclaimed by the French Revolution that Chile bound herself, pledging her national good faith, to the plebiscite of Tacna and Arica, if one gives the words their only clear acceptation.

From the time of the reestablishment of this institution by the National Assembly, the more or less correct expression of the popular will on behalf of annexation has shown itself most often with the absolute setting aside of the sovereign repudiated, by the initiative of insurrectionary governments or of the belligerent occupant.

Such cases do not serve as precedents for the two-sided pact of Ancon.

The nation granting the cession has not stipulated the plebiscite except on four occasions:

In the treaty of Turin, of March, 1860, between Sardinia and France, referring to Nice and Savoy.

In that of Prague of August, 1866, between Prussia and Austria, referring to the population of the northern districts of Schleswig.

In the said treaty of Prague, completed at Vienna the following day between Austria and France, and later in October of the same year, between Austria and Italy, referring to the Lombard-Venetian Kingdom.

And in that of Paris, of August, 1877, between Sweden and France, referring to the return of the island of St. Bartholomew.

In the treaty of Turin, before submitting it to the will of the people, the King of Sardinia declared that "he consented to the reunion of Savoy and the union of Nice with France and *renounces for himself and his descendants and successors in favor of His Majesty the Emperor of the French his rights and titles over said territory.*"

In the treaty of Prague the Emperor of Austria also *renounced in favor of Prussia* his sovereignty to the north of Schleswig the plebiscite arranged for in article 5, which in 1878 the contracting powers abrogated, forecasting in fact that the outcome of the vote of

the natives would be in favor of neither cedent nor cessionaire, but for reincorporation into Denmark.

In the treaty of Vienna, "under condition of the consent of the population after they have been duly consulted," established by Napoleon III, who had accepted the cession to transfer it to Italy as provided in the treaty of Prague, the same Austrian Emperor who ceded it "*consents to the reunion of the Lombard-Venetian Kingdom to the Kingdom of Italy.*"

Finally, in the treaty of Paris, also with a reservation concerning the consent of the population, "the King of Sweden and Norway *returned to France* the island of St. Bartholomew and *renounces in consequences for himself and his descendants and successors* his rights and titles over said colony."

In the treaty of Ancon, Peru has not renounced, as the sovereign in those mentioned, her territories of Tacna and Arica.

On the contrary she has made very clear her earnest desire not to suffer other mutilation, since she not only depends for "the form in which the plebiscite shall take place" on "a special protocol which would be considered as an integral part of the treaty," but is bound, the same as the Government of Chile, to the delivery of 10,000,000 soles in case the result is favorable to her, an obligation in proof of her expectations which is not found in any of the other four pacts recorded.

The populations of Nice and Savoy and St. Bartholomew and also those of Venice were more united to France and Italy, respectively, than to Sardinia, Sweden, and Austria, by more or less suggestive historic ties. The people of Tacna and Arica are in the main Peruvian; over these Provinces Chile could never have been influential or pretended to any right whatever.

The plebiscite in Nice and Savoy was held in April, 1860; in Venice, October, 1866; and in St. Bartholomew, in the last days of September and the first of October, 1877; or within a few weeks of the treaties of March, 1860; October, 1866; and August, 1877, which respectively stipulated them. That of Tacna and Arica had the necessary period of 10 years; it was not considered of the essence of the pact, as would have occurred in 1883 if in truth Chile had imposed and Peru had resigned herself to accepting it as a form, in consequence of the war, of acquiring those territories at all hazards.

There exists, then, no parity between the treaty of Ancon and those of Europe erroneously cited as antecedents.

Then the clause relative to a decision of the popular will had not for its negotiators the force of a dead letter.

Previous negotiations ratify that assertion.

Such are those of October, 1880, on board the American corvette *Lackawanna*, in which the Chilean plenipotentiaries assumed, among other demands of minor importance, the cession of the territories south of the Pass of Camarones the payment of 20,000,000 pesos by Peru and Bolivia together and "the *retention* of Moquegua, Tacna, and Arica until the obligations to which the previous conditions refer shall have been fulfilled, Peru binding herself moreover not to mount cannon at the port of Arica *when it shall be delivered*, or at any time." Such also are the negotiations of the Balmaceda-Prescott protocol, signed February 11, 1882, in Viña del Mar, in which the minister of foreign relations pointed out as a basis for peace (not

concurred in by the United States, which had offered its good offices) the same *cession* to the south of Camarones, the payment of 20,000,000 pesos and *the occupation of Tacna and Arica for 10 years* or the longest time "Peru could fix in the treaty," with the obligation that if, on the expiration of the period stipulated, such sum should not be paid "the territory of Tacna and Arica would remain ceded '*ipso facto*'" and that "if Arica should return to the dominion of Peru, she would remain unarmed forever." The same is true of the negotiations in which Mr. Logan took part, in which, according to the memorandum of October 18, 1883, the Chilean chancellor suggested the idea, disregarded by President Calderon, of carrying out a plebiscite to determine whether Chile was "disposed to pay 10,000,000 pesos for the territory, *if the plebiscite delivered it to Chile*, and expected to receive, in turn, 10,000,000 pesos *if the plebiscite accorded the territory to Peru*, and accepted arbitration to establish whether or not Chile had the right to purchase the territory of Tacna and Arica or had "to occupy said territory in a military sense for the period of 15 years, being obliged to evacuate it at the end of that period."

These negotiations bring into relief the fact that Peru resisted always the cession, in whatever form, of the territory of Tacna and Arica, and that for the same reason on accepting the decision by suffrage in the treaty of 1883, she contemplated the legal plebiscite according to the uniform criterion of treaty makers, and not the prostitution of the popular will which at any time excesses may profane. For this reason both Republics foresaw, as was foreseen in the previous projects, the difficulty that would arise when these territories should be reincorporated into Peru.

Also the same assertion is corroborated, not only by the declarations to Mr. Larrabure, in 1884, of the Chilean negotiator of that pact, Mr. Jovino Novoa, but, laying aside all those of extemporaneous and unofficial character by Mr. Luis Aldunate, by those laid down in 1883 (the year of the treaty) in the memorial of that functionary in his capacity as minister of foreign relations.

In order not to have a disguised cession, on August 10, 1892—before March 28, 1894, on which date the decennial expired—Mr. Larrabure invited the plenipotentiary, Mr. Vial Solar, to the elaboration of the protocol relating to the plebiscite; and the conferences, principally verbal, continued during an extended period of years, now verbally, now written, the same in Lima with the agents of Chile as in Santiago with the many statesmen who succeeded each other in the Moneda, without anyone ever disclosing that such proceedings were incongruous.

Far from this, foreseeing the possible triumph of Peru in the plebiscite, Mr. Lira asked a guarantee for the payment of the indemnity; and the Government of Chile maintained its proposal, always opposed, for the increase on her behalf of some millions above the 10 indicated, in case, the fact having been modified, a definite cession should be agreed upon.

In the first clause of the treaty between Chile and Bolivia of May 18, 1895, on the transfer of territory, Chile was obliged to cede to Bolivia the Provinces of Tacna and Arica "*if she should acquire them as a result of the plebiscite* which should take place in conformity with the treaty of Ancon;" in the third clause "it is prom-

ised to *employ all her efforts in obtaining a definite property*” in said territories; and in the fourth clause there is a subsidiary compromise on “*not being able to obtain in the plebiscite or by direct arrangements the definite sovereignty of the zone in which are located the cities of Tacna and Arica.*”

It is obvious that on having agreed concerning the abandonment, Chile did not contemplate, as in the pact of 1895, or in the additional and explanatory protocols of December 9 of the same year and of April 30, 1896, the possibility of suffrage in favor of Peru.

For this reason, ratifying previous declarations, the minister of foreign relations of Chile set forth, in his memorial of 1894, that the treaty of October 20 “*had deferred to a later pact, consecrated by a solemn agreement, and of results absolutely uncertain, the adjudication of dominion over those territories.*”

In his turn, in his message of 1900, President Errazuriz said that “*in the treaty of peace the definite nationality of Tacna and Arica remains undecided.*”

For this reason, also, Mr. Errazuriz respected the international compromise in the Billinghurst-Latorre protocol, which the Senate sanctioned; and after summarily approving of it, the Chamber of Deputies left it in suspense, not because that document rescinded any agreement, but so that the Executive Power might initiate new diplomatic proceedings to fulfill the third clause of the pact which stipulates the plebiscite by popular vote.

The deduction concerning the simulated cession or conquest of the Provinces of Tacna and Arica—drawn, not from the text or the spirit of that treaty, but from inapplicable European plebiscites—ought, then, to be dismissed completely.

II.

Nor is it exact, Mr. Minister, that to the Government of your excellency should belong exclusively the designation of the personnel which should preside over the plebiscite, whether in the enrollment of electors, the reception of the votes, or the rules of the election.

What is the title to the sovereignty which to-day Chile alleges in the Provinces of Tacna and Arica?

It certainly is not that of occupation, which the law authorizes only in respect to the *res nullius*.

Neither is it that of the bloody military advance during the war to which the treaty of 1883 put an end, in whose fulfillment the army evacuated the invaded region, with two exceptions, one being Tarapacá and the other the Provinces mentioned.

On that pact alone depends the title invoked.

Its text establishes in the third clause that the territory of Tacna and Arica “*shall remain in the possession of Chile, and subject to Chilean laws and authorities, during the term of 10 years, to be reckoned from the ratification of the present treaty of peace.*”

The exchange of ratifications was effected March 28, 1884.

The decennial ended, in consequence, on the same date in 1894, and Peru recovered legally her entire sovereignty, in part suspended.

For that reason the minister of foreign relations, Mr. Gimenez, recalled in June, 1893, to the Chilean plenipotentiary the opportunity

for the return of the Provinces temporarily occupied; then, on encountering resistance, he proposed that the solution of the case should be submitted to the judgment of a friendly government, and later, on the eve of the expiration of the period, the Peruvian plenipotentiary in Santiago, Mr. Ribeyro, presented again the fact that the occupation of those Provinces did not belong to Chile after March 28, 1894.

That affirmation is perfectly in accord with the spirit and the letter of the treaty.

The third clause adds a continuation of the phrase written before:

This period (that of 10 years) *having expired*, a plebiscite will decide by popular vote.

It is, then, when the decennial has expired—not within it—that the plebiscite should have been held.

It is natural, in fact, that the people should be left free from the compulsion which authorities animated by a mistaken zeal assume to exercise in favor of their own nationality among those to whom, during a decennial interval, they ought to have made efforts to render more pleasing the administrative régime of the occupying country.

With the termination of the period ends that of the conventional law for whose enforcement stipulation was made.

Finally, there has ceased, for this reason, the precarious sovereignty of Chile in the territory of Tacna and Arica.

Possession for a period categorically defined is not prolonged or renewed indefinitely solely by the free will of the party which enjoys it against the protests of the other contracting party.

With such motive, doubtless, the distinguished predecessor of your excellency, Mariano Sanchez Fontecilla, proposed to Mr. Ribeyro, among other points, the following:

There is postponed until March 28, 1898, the period of 10 years accorded in Article III of the treaty of Ancon.

The postponement not being granted, the Government of your excellency ought, then, to return the Peruvian territory, thus respecting the aphorisms of universal law, according to which, at the expiration of a term of temporary tenancy, the direct owner of a thing recovers entire his dominion.

It is only with the object of arriving at an end and avoiding distrust that, in consequence of the refusal of Chile, Mr. Gimenez conceived, as a recourse of transaction, the delivery of the Provinces to a third power designated by common accord, in order that under its auspices may be verified the actuation and according to its results the republic chosen will receive the Provinces without delay.

If so equitable a proposal should be made practicable, and there should disappear with possession the advantages of propaganda which make the convocation of a plebiscite now valueless, the obstacles would have been easily solved and there would remain no ulterior causes of discontent.

Neither do the diplomatic precedents to which your excellency alludes show that plebiscites have been carried out under the exclusive direction of the State in whose advantage the suffrage resulted.

The plebiscites of 1860 in favor of France were effectuated, according to official documents, under the *presidency of the authorities named by the ceding King* of Sardinia.

In the proclamation of that Monarch to the populations of Savoy and Nice he told them, in effect:

In order that nothing may impede the free manifestation of your votes, I separate the principal functionaries of the administrative order which does not belong to your country and replace them at once by various of your citizens who enjoy general esteem and consideration.

Said new functionaries expedited, each one in his own locality, the regulations delivered certain municipal bodies who should form the list of citizens with right to vote, pass upon complaints, etc.

The plebiscite of 1866 in favor of Italy was carried out in conformity with the *regulation of the annexing sovereignty* but under the presidency of municipalities composed exclusively of natives.

The French Deputy, Gen. Lebouef, received, in fact, Venice, and delivered it to a body of notables presided over by Count Michiel. Victor Emanuel then regulated the proceeding, arranging that the municipal representatives of the Provinces liberated from Austrian occupation should dictate "all convenient dispositions in order that the manifestation of universal suffrage should be free and solemn."

The plebiscite of 1877, with result favorable to France, was effected under the *presidency of the ceding King* of Sweden, who ordered the governor of the island of St. Bartholomew to "make suitable arrangements for the voting," establishing the rules which would have to be followed.

The only conformity of these precedents is in the *modus operandi* before natives of the locality subject to the plebiscite; and if they were imitated there would intervene as functionaries only the people of Tacna and Arica.

But in that which concerns the presidency, the examples are found to lack conformity.

The renunciation being absolute and explicit for the ceding sovereignty, his descendants and successors (an essential point contrary to the treaty of Ancon), it would have been conceivable that it would leave the cessionaire in complete liberty. Nevertheless, in two cases out of three, it is the cedent who assumes always, according to said official documents, the high direction of the plebiscite.

I have the honor to assert that the continuation of Chilean authorities in the territories of Tacna and Arica, after March 28, 1894, is patently illegal.

From what is unlawful no rights emanate.

Then there can not exist what Chile never had: the right of sovereignty to preside over the plebiscite, much less to direct it without control, enrolling the electors, receiving the votes for or against her aspirations, scrutinizing the elections, and announcing their result.

Your excellency says that "it does not appear suitable" that the Chilean authorities "on forming electoral boards, should give representation on them to citizens of Peruvian and other nationalities."

Citizens of other nationalities could not be other than impartial if designated by our respective Governments, of common accord, to preside over the elections.

My Government, to which in truth belongs the exercise of sovereignty in the captured Provinces, and which does not invoke it to pretend to a simultaneous rôle of judge and party, does not admit, Mr. Minister, even in the form of a gracious concession, the subordinate actuation, a humiliation, which, considering the friendly and

conciliating spirit of our negotiations, the undersigned would have wished that your excellency might have refrained from mentioning.

Although the sincere promises of impartiality which your excellency has the goodness to reiterate do not inspire doubts, it suffices to remind you that expectations concerning Tacna and Arica exist not only in Chile but in Peru; for the same reason, according to the fundamental precepts of justice, the only logical deductions from this right, equal in principle, is that the two Republics shall have identical intervention and identical positive assurances, so that the plebiscite may express, with the testimony of both, the verdict of the people.

This is the basis accorded in the Billinghurst-Latorre protocol.

III.

Permit me now, your excellency, to show that there belongs only to the natives the right of suffrage.

While they are not nationalized, foreigners retain their legal status as such. In order not to lose their own national ties, or to acquire those of the foreign country, they are deprived of political rights in the place of their domicile; and on a transfer of territory, without binding them by any declaration whatever, their personal status remains the same.

The plebiscite vote, in the present case, is of a very special character. Not only does it make effective the participation of the citizen in the management of public affairs, but particularly in the selection of sovereignty determined for the territory. Its political quality is sufficient to exclude from it all foreigners, without exception, since constitutional knowledge dogmatically deprives them everywhere of this right.

If suffrage is of such a nature that its exercise can not be conceded to the nationals of the countries interested, still less is it possible to pretend that it may be bestowed as a privilege upon foreigners. Tacna and Arica are Peruvian Provinces. Notwithstanding the fact that the citizens of Peru, not born in Tacna and Arica, would be denied the vote, this would belong to the citizens or subjects of other nations; and thus those who might be supposed to have no interest in the result of the plebiscite would be in a better political situation than their compatriots. The intelligent judgment of your excellency relieves me from elaborating upon the absurdity of such a conclusion.

If the plebiscite is an exclusive right of sovereignty, and its development does not affect the foreign population, it is obvious that nothing will justify the intrusion of those guests in that act of such transcendental effects only for the political group of which they form no part.

To concede them the vote is to attribute to them joint dominion, equally with the citizens of Peru, over the territory which temporarily they have inhabited; mastery over those who temporarily offer them hospitality, to the extent of deciding upon their future, wounding the sacred love of country; it is to authorize them, influencing thus in the dispossession and denationalization of the citizens, to abandon neutrality, which in every international contention the most trivial rules of right impose upon them.

Dr. Alexander Alvarez, technical consultor of the ministry now in charge of your excellency, said in one of his publications, referring to the foreigners domiciled in Tacna and Arica:

It is a fundamental principle of civil and constitutional law of all countries that in a foreign country the foreigner has no political right; and the suffrage as to which of the two contending countries a portion of territory which is occupied in a military sense by one should belong is the highest manifestation of a political right from the international point of view. Aside from this reason, which is fundamental, it may even be asked by what motive the foreigners would have the right to vote on a matter of annexation from one country to another. Because they have possessions in those territories? That interest only gives them the right to ask that their belongings be respected, and nothing more. And from the moment in which their possessions are respected, they could claim no right to take part in the suffrage to decide a question to which they, as foreigners, have been and ought to remain strangers.

The quality of being Chilean is not so exceptional as to justify the vote.

In his memorial to the Congress of 1883, the root of the pact of Ancon, the well-known statesman Luis Aldunate, after expounding the influence of the transitory administration of Chile, added:

If all these causes should induce the inhabitants of Tacna and Arica to *decide for Chilean nationality*, in that hypothesis, which ought to be considered perhaps the most probable, the *assimilation* of our *new nationals* would be accomplished beforehand without violence or abrupt breaks and without exacting more than a simple rectification in the geographical map of Chile.

Those concepts of the minister of foreign relations which he had in Lima as delegate of the Government of Santiago, with the object of inspiring arrangements for peace, showed that the voters induced to "decide for Chilean nationality," the "new nationals," were not the sons of the occupying Republic, but the Peruvians whose "assimilation" was presumed as a consequence of good administrative regimen in the retained provinces.

The Chilean citizens resident in these Provinces are as foreign as the rest.

Without right in the Peruvian sovereignty, without their personal status being affected by the result of the plebiscite, the circumstance of importing their vote in behalf of Chile, not only a violation of neutrality but an effective aid in the act of conquest, makes even more evident their disqualification.

The third clause of the treaty establishes that on the expiration of the period of 10 years "a plebiscite will decide by popular vote" whether the territory of the Provinces of Tacna and Arica shall remain definitely under the dominion and sovereignty of Chile or whether it will continue being part of the Peruvian territory.

Your excellency is good enough to suppose that the "popular will" required is that of all the inhabitants, including that of the foreigners who have rooted their interests and established their families in the locality to whose prosperity they contribute with persevering and fruitful labor.

If the deduction from this last observation were exact, this would be sufficient for the bestowal of political rights upon them.

At present such a theory would infringe upon that of Chilean legislation which forbids them participation even in municipal affairs.

In the foreign resident, instability may be presumed; the desire to return to the homeland whose ties have not been broken, with the new family and the new fortune acquired while away.

For this reason it is conceivable that in him the conflict of a plebiscite would produce an interest only in his own tranquillity at whatever cost.

Who desires truly, whatever may be the place of his residence, in place of peace, not present good but that of the future of the region, are the natives themselves who, in its defense, by duty and patriotism, sacrifice homes, family, and life.

Article 1 of the constitution of Chile declares that its Government is "popular."

It is thus designated inasmuch as its elections originate not from the union of German, English, etc., inhabitants, but of the citizens, that is, of the Chilean people.

Amplifying the statement, the text makes exact the scope of the designation in the field of law.

There is no reason for variation in international law; the more is this true in reference to the plebiscite, inasmuch as the institution is founded, I must repeat with apologies, on sovereignty; that is to say, on the people who exclusively constitute the nation.

Thus the treaty makers teach.

And also the diplomatic antecedents invoked by your excellency ratify it.

In the treaty of Turin, it is stipulated that for the transfer shall be taken into account "the will of the people." The regulation for the plebiscite in Nice is set forth in article 4: "There shall be admitted to vote all those *citizens* who are at least 21 years of age, *who belong by birth or origin to the earldom of Nice*; and for the action in Savoy it sets forth, also in article 4: "There shall be admitted to vote all the citizens who are at least 21 years of age *born in Savoy or out of Savoy, of Savoyan parents* who inhabit the district."

In the treaty of Vienna also is stipulated the transfer "under condition of the *consent of the people duly consulted*." The regulation for the plebiscite "in the Italian Provinces liberated by the Austrian occupation" sets forth in article 5: "On the days designated for the voting *all Italians* of said Provinces who have completed 21 years."

In the treaty of Paris, likewise, the transfer is stipulated "with the express condition of the consent of the people of St. Bartholomew," and the King of Sweden set forth: "Every man of the population of the island, in the enjoyment of civil rights and having attained his majority, can take part in the plebiscite." An explanation was believed necessary, and it was given as follows by the minister of foreign affairs of the ceding monarch: "The sense is, *naturally*, that only Swedish subjects may vote."

In all those regulations, in accordance with the treaties which pledged the consent of the peoples or populations, there is mentioned always the citizens, never foreigners or nationals of the would-be annexor.

The analogous formula of "popular vote" employed in the treaty of Ancon could not, then, Mr. Minister, be interpreted in a contrary sense.

While deploring the necessity of so doing, I have abused the kind attention of your excellency.

To me it has seemed necessary to do it, in order to place in relief the fact that the allegations of the Government of Peru in this matter are not inconsiderate and arbitrary, and to the end that, such conviction having reached the mind of your most excellent President and of your excellency, your rectitude and energy may pave the way for agreement. These induce me now to take up next some opinions expressed in the important communication to which I reply.

Your excellency says to the undersigned:

Your excellency knows well that the treaty of 1883, on leaving to be determined by plebiscite the definite nationality of Tacna and Arica, did not express what was to be understood by said plebiscite, nor did it fix the form and manner of its execution.

Naturally such omissions can not be attributed to forgetfulness on the part of the negotiators, but to an implicit recognition that the procedure agreed upon could not be other than that of the plebiscites in the History of International Law.

In previous paragraphs there has been defined the spirit and juridical effects of the plebiscite. I now content myself with observing that the historical procedure, to which your excellency alludes, shows itself in two aspects.

One of these is that of the previous regulation of the *modus operandi*, set forth by the authority in Nice, in Savoy, in the Italian Provinces, and in the island of St. Bartholomew, as I have shown in detail.

The other is, sometimes, at the root of the pact with the cedent sovereignty, now without interest in the population or populations which he has explicitly and *absolutely abandoned*, manifesting itself in brutal coercion and fraudulent maneuvers, in order to obtain, at whatever hazard, the burlesque form of transfer.

I hasten to recognize, Mr. Minister, that the Government of Chile does not actuate under the latter aspect which would destroy the prestige of the administration of his excellency, Mr. Montt.

Historical precedents center, then, around the regulatory aspect, also sometimes observed, of plebiscites, and it is reasonable to suppose that it is this aspect which the negotiators of the treaty of Ancon held in view.

The words of the worthy predecessor of your excellency, Mr. Luis Aldunate, in his memorial of the same year, support such an opinion:

If the result of the plebiscite should return the territorial region of Tacna and Arica to the dominion of Peru, Chile will fulfill her loyal and honorable policy by respecting the decision of those peoples.

I take pleasure in declaring, Mr. Minister, that from this point of view, which in truth resolves the principal difficulties, I accept, with small differences, the judgment of your excellency.

As your excellency has worthily emphasized, we find ourselves in perfect accord in the primary duty of putting an end to a situation which has for so long disturbed the harmony of our times.

For that and previous considerations, I permit myself to invite your excellency to continue the conferences until we obtain accord, adapting to the disputed clauses of the Billinghurst-Latorre protocol, which has served us as a basis, the positive precepts of the diplomatic antecedents, in accordance with the principles of law and justice.

These principles, Mr. Minister, are those which, among collective bodies, as between men, silence immoderate suggestions of the conveniences, strengthen with stable ties the sisterhood of the States, and at the same time promote, in harmonious concert, the aggrandizement without blemish of each one of them, satisfying thus the noble demands of patriotism and those no less elevated of love of humanity and civilization.

I am sure that, understanding it thus, the great Government of your excellency will be persuaded to render tribute to the spirit of Pan-American solidarity which to-day dominates all the nations of our continent for the just arrangement of the differences which separate them.

I am very pleased to repeat to your excellency the assurances of my most distinguished consideration.

G. A. SEOANE.

To His Excellency Hon. FEDERICO PUGA BORNE,
Minister of Foreign Relations of Chile.

OBSERVATIONS ON THE NOTE OF HIS EXCELLENCY, MR. SEOANE.

The treaty of October 20, 1883, between Chile and Peru, known as the pact of Ancon, put an end to the war between the two countries.

In conformity with the terms of the second article of that agreement, Peru ceded to Chile, perpetually and unconditionally, the Province of Tarapacá, and by article 3 the Provinces of Tacna and Arica are subject to our sovereignty and, consequently, to our legislation and authority, until a plebiscite, which should be celebrated 10 years after the ratification of the treaty, should decide with which of the nations they would be indefinitely incorporated. The country to which the sovereignty of those territories belonged would pay to the other 10,000,000 pesos in Chilean silver money or the equivalent in Peruvian soles.

A second clause of the article adds that a special protocol would establish the form in which the plebiscite would be celebrated and the terms and periods for the payment of the 10,000,000 of pesos.

A little before the expiration of those 10 years the chancelleries of both countries opened negotiations to reach an agreement on the plebiscite, without attaining that result.

In 1901 Peru withdrew her diplomatic representation in Chile and at the same time directed a circular to the foreign chancelleries, in which the charge was made against our Government of refusing to comply with the pact of Ancon.

The chancellery of Santiago which, in the course of its negotiations, sought, in the highest spirit of conciliation, a friendly agreement with Peru, invited her in a note dated March 15, 1905, to renew diplomatic relations. To avoid having the negotiations which might be initiated become a reproduction of those which had been futilely carried on up to that time, the invitation was made with the object of procuring an agreement based on the interests and convenience of both Republics, adding that "in this field, which is that of reality in

the life of the peoples, the agreement between Chile and Peru would be immediate, absolute, and lasting."

The Government of Peru accepted the invitation and accredited a minister plenipotentiary in Santiago.

According to the result of the notes exchanged February 18, and March 15, 1905, between the two chancelleries, and of March 26 and May 8, 1908, between our minister of foreign relations and the representative of Peru, his excellency, Mr. Seoane, the controversy has been based on the following points on the part of Chile:

1. The negotiators of the pact of Ancon, on stipulating that Tacna and Arica should remain under the sovereignty of Chile, pending a plebiscite to determine later the definite nationality of those territories, gave to this proceeding the value and force which diplomatic history and international practice pointed out to them. As statesmen which they were, they took the plebiscite formula, not in its theoretical or juridical scope, but as the most adequate procedure for the difficult circumstances which beset the Government of Peru; that is to say, a practical and honorable form for facilitating the annexation of those territories, making it acceptable to the popular sentiment of the country conquered in the contest.

2. The Government of Chile, in its desire to reach a friendly solution with Peru, has manifested, in the whole course of the negotiations, its will not to be extreme in the exercise of the rights which in reality the treaty of Ancon confers upon it provided always that on its part the Government of Peru shall manifest itself disposed to an arrangement which shall assure a solid and durable peace and reestablish concord between the two peoples.

3. In the judgment of Chile, the best means of securing these results consists in binding agreements which shall take into consideration mutual political and economic interests. One of these agreements is the celebration of the plebiscite on a more equitable basis which she proposes, tending to assume universality of suffrage as well as impartiality of scrutiny, and capable, therefore, of giving triumph to Peru, if thus the popular vote should decide.

On her part Peru alleges:

1. That the plebiscites which history registers have not the force which the Government of Chile assumes;

2. That, supposing they did possess this force, the plebiscite stipulated in the pact of Ancon is of a very different nature from those which have been agreed upon up to the present; and that, in consequence, it should be complied with rigorously. Therefore Peru intends that the plebiscite shall not be presided over by Chile, and that only the original Peruvian inhabitants of Tacna and Arica shall have the right to vote. These propositions are equivalent on the whole to assuming that the operation of a mere form which shall assure beforehand the victory to Peru is binding.

3. That since 1894, the date on which the plebiscite should have been celebrated, our country ceased to exercise sovereignty over Tacna and Arica, converting itself into an unjust retainer of that territory.

Let us examine each of these points, which now constitute the basis of the discussion between Chile and Peru, as it appears from the communications quoted.

I.

Our minister of foreign relations, Mr. Luis A. Vergara, stated in his note of March 15, 1905, directed to the Government of Peru, the following:

All the international plebiscites held within the last two centuries have been but hypothetical measures for the purpose of sanctioning an annexation already made, as those called during the French Revolution, or to attenuate an annexation or cession already made, as those which have taken place in the nineteenth century. The result, as a natural consequence, has always been favorable to the annexing country, which never yet saw in these plebiscites any discussion of its rights but only a mere formality.

It is not difficult to demonstrate, in the light of history and with examples of recent times, the exactness of this statement.

The idea of applying the plebiscite to territorial annexations was born during the French Revolution as a consequence of the beginning of popular sovereignty, proclaimed at that time.

Understanding, however, that it was very dangerous to apply this principle in so resolute a manner to the relations of State to State, the National Convention of 1792 tried to reconcile the dogma of sovereignty and the promises of fraternity and help which the convention itself had offered to all nations, with the necessity and natural aspiration which the French people felt for enlarging their frontiers.

In the manner of effecting the conciliation, that assembly did not vacillate; to the necessities of external policy every principle, however fundamental it might be, should be subordinated.

From this cause the idea of limiting the force of the plebiscite by adopting various proceedings, according to the cases which present themselves, arose. If the region which was to be annexed desired to be united to France, the plebiscite should be taken as a mere form; and, in a contrary case, the popular will had to be subject to that of the conqueror, employing, if it were necessary, the coercion of armed force.

The annexation to the French Republic of Nice and Savoy is a notorious example of the first case. The plebiscite held after the occupation of those territories by the French Army deceived no one, neither the onlooking countries nor the interested nations themselves. According to the expression of the renowned historian Michelet, that was not in truth a conquest but a simultaneous act of fraternity in which two kindred peoples long separated, again met in the course of history, and founded one State.

The countries on the left bank of the Rhine, and above all, Belgium, are examples in the second case.

France did not hesitate to annex by arms those regions which, politically and economically, were necessary to her, resorting later to the plebiscite as an apparent form of respect to the popular will which went to render more solemn the fact of annexation.

On the left bank of the Rhine, the French commissioners charged with effecting the plebiscite went to painful extremes to falsify the popular will, and even terrified the electors who were obstinate in voting against the transfer of sovereignty.

Analogous proceedings were observed in Belgium after its occupation by the French Army.

The lesson which may be deduced from the plebiscites held during the French Revolution is, then suggestive.

The same governors who declared that there could be no acquisition of territory, above all in consequence of a war, without the consent of the inhabitants, recognized in the practice that it was impossible to apply loyally to this rule when the convenience of the conqueror exacted otherwise a doctrine which Carnot synthesized in 1793 on declaring that, in the matter of annexations, there was a principle superior to the popular will: "To prevent other people from imposing on us their law."

In 1793 the Government of France abandoned recourse to plebiscites in conquests, not having consulted since then, even as a matter of form, the will of the inhabitants of the region which she takes under her sovereignty.

The same thing occurred in the nineteenth century, under Napoleon III. Neither France nor any country submitted to popular vote the numerous annexations which during this epoch were carried into effect.

Napoleon III, who, in the interior political order, had appealed to the plebiscite to justify before the world the blow of the State in 1852, and who had always been presented as the most unselfish defender of individual rights and the most decided partisan of the principle of nationality, succeeded, by means of his preponderating influence in Europe, in having all Governments accept the institution of the plebiscite for certain cases of change of sovereignty, in which he took a more or less direct participation.

Said institution has been stipulated since then in the following cases: Unification of the Italian States; annexation of Nice and Savoy to France; annexation of the Lombard-Venetian Kingdom to Italy; of the northern part of the Duchy of Schleswig to Prussia, and the retrocession of the island of St. Bartholomew to France.

The Italian plebiscites have no practical importance from the point of view in which we are interested. They were only for the tangible attestation of the will of the citizens of free States which earnestly desire unity with Italy.

Napoleon III, who had contributed efficiently to the formation of this unity, asked and obtained from the King of Sardinia, in recompense for his services, the cession of Nice and Savoy to France.

In the treaty of March 24, 1860, under whose terms the cession was made, it is stipulated that the cession shall be effected without violating the popular will, and that the Government of France and Sardinia shall agree upon the best means of estimating and proving this will.

The plebiscite, which was destined to be a mere form, was carried out under the direction of the Governor of Sardinia, the country which exercised sovereignty in the territory. And what is more worthy of note: In spite of the dispositions of the pact of 1860, there was no formal agreement between the French and Sardinian Governments on the conditions of effecting the plebiscite, which were fixed by the agents of Sardinia. In Savoy they were made by the governor general of the Province of Chambery, Dupasquier, under date of April 7, who, in order to save appearances, said that these conditions had been established in accord with the French chancellery. In Nice they were by the provisional governor; and the formation of the electoral lists like the operation of the vote were regulated by recorders named by the King.

The right of suffrage was accorded only to the original inhabitants of the territory because they were nationals of the country which exercised the sovereignty in it, and because without discrepancy of opinion, they showed themselves decided partisans for annexation to France. The best proof of that is that the annexation was proclaimed by an almost unanimous vote.

The Lombard-Venetian Kingdom was ceded to Italy also under the appearance of a consultation of the popular will.

By the treaty of Vienna of October 3, 1866, which put an end to the war between Austria and Italy; Austria declared that she had ceded to France that Kingdom (Convention of Aug. 24, 1866); and that, the Emperor Napoleon III having declared in turn that he was disposed to recognize the incorporation of this territory into Italy, under condition of the consent of the population when duly consulted, the Emperor of Austria consented to the reunion to Italy of the Lombard-Venetian Kingdom. The evacuation of the ceded territory had to be made immediately after the signing of the treaty of peace and effectuated according to the decisions of the special commissioners designated for the purpose. These agreed that the cities and fortifications should be handed over to the municipalities, who would proceed to carry out the plebiscite.

These conformed, for the purposes of that act, to the regulation set forth by the King of Italy, who in reality had entered upon the exercise of sovereignty in that region.

Article 5 of the regulation conceded the right of suffrage in the Provinces liberated from Austrian occupation to all Italians resident there who were 21 years of age.

In this case, as in the former one of Nice and Savoy, the plebiscite was carried out under the authority of the country which exercised sovereignty at that time, and the vote was granted only to the nationals of the respective territory who were the better disposed to vote in favor of annexation. The consultation of the popular will was, then, pro-formula, and resulted almost unanimously in the sense of reincorporation of the Lombard-Venetian Kingdom into Italy.

The treaty of Prague of August 23, 1866, which put an end to the war between Austria and Prussia, stipulated that Austria should cede to Prussia its rights over the Duchies of Schleswig and Holstein, which both countries had won from Denmark; and added that if the inhabitants of the northern districts of Schleswig, by free suffrage, should manifest their desire to be reunited to Denmark they should be ceded to that country.

This clause was inserted out of deference to the desires of Napoleon III; but the thought that it would be fulfilled was not seriously entertained. The consultation, duly made, would have given a result favorable to the annexation to Denmark, the population in the district where the plebiscite should be held being Danish. But Bismarck declared more than once that this consultation was useless, because in case of the decision being adverse to Prussia, the military front and external security of his country would be affected, and this, in his judgment, could not in any case be dependent upon a popular vote.

On January 12, 1867, Prussia dictated the form for the incorporation into her sovereignty of the two duchies, without making the ex-

ception or condition which the treaty of Prague established in favor of the inhabitants of northern Schleswig.

By the treaty of Vienna of October 11, 1878, between Austria and Prussia, that disposition relative to the plebiscite was left without effect, it being declared that this was done "in view of the difficulties which opposed the realization of the principle established in article 5 of the treaty of Prague." Such historical incidents referring to the annexation to Prussia of Schleswig and Holstein are, by the form in which they have been produced and the importance of the countries which have taken part in these negotiations, of greater importance in international practice.

Two great powers, Prussia and Austria, established a precedent which marks the course in the attitude of nations in cases where disagreements and conflicts relative to the fulfillment of any of the clauses of a treaty solemnly signed and ratified occur. Before the harmony and general convenience of peoples, and in the presence of more effective and enduring interests, the clauses agreed to (that of the plebiscite in this case) are left without effect by common accord when their fulfillment is not easy and liable to be accompanied by unrest or outbreaks.

After the fall of Napoleon III, only once has a plebiscite been stipulated for the purpose of deciding on territorial annexation, and that had for its object, the same as in other cases, to solemnize the fact of annexation.

By the treaty of August 10, 1877, Sweden returned to France the island of St. Bartholomew, previously consulting the will of the inhabitants. By royal order of the King of Sweden to the governor of the island, dated August 17 of that year, he was charged to proceed to the celebration of the plebiscite in the form which he should determine, all inhabitants who had reached their majority and were in the enjoyment of their civil rights being able to participate in the voting. In defining their civil rights, the minister of foreign relations of Sweden in a telegram to his legion in Paris of September 5, said:

* * * It is well understood that the Swedish subjects alone can vote.

In that case, as in the previous ones, the plebiscite was arranged and effected under the exclusive authority of the country which exercised sovereignty over the territory, the right of suffrage being granted only to the citizens, in deference to the fact that they were nationals of that country and that it was known that they wished to vote in favor of annexation to France, as is shown by the circumstance that of 352 voters only one was contrary to this result.

Various important consequences may be deduced from the history of international plebiscites in the nineteenth century, all of which, contrary to those of the French Revolution, have been carried out without any violence whatever.

The first is that, when that proceeding was stipulated, it has been only a form, to justify by the appearance of a popular vote the transfer of territory agreed upon beforehand.

Another consequence is that the operation of the plebiscite, as an act of sovereignty, was effected always under the exclusive direction of the country which exercised sovereignty over the ceded territory, the Government of this country being the one which arranged by

itself alone the conditions for the celebration of the plebiscite, although the stipulation was that it should be arranged by common accord.

In order that the voting may be carried on freely and appear characterized as the popular will, the right of voting, in spite of the fact that it was stipulated that it would be granted to all the inhabitants of the region, was conceded only to the citizens who, besides being nationals of the State which gave them this right, were by their historical antecedents decided partisans in favor of the territorial transfer.

Finally, in case it is known beforehand that the plebiscite will give an unfavorable result to the country which exercises the sovereignty, the act has not been carried out, leaving then without effect, by common consent, the agreement to which they had bound themselves.

By such antecedents it is that statesmen and publicists consider the institution of the plebiscite as an accessory form, destined to save appearances, as the external ratification of the act officially agreed upon by the chancelleries.

None of the statesmen of the nineteenth century who have ruled the destinies of great nations has had the candor to confide to the chances of an unconditional plebiscite, with uncertain results, the definite sovereignty of a territory which ought to be incorporated into his country by the unescapable force of events or by political and military exigencies which nations can not always lay aside without compromising their safety and tranquility.

His excellency, Mr. Seoane, pretends that the history of plebiscites does not form precedents, because in those acts fraudulent manipulations have always been produced, causing the repeated triumph of the annexor, and that the plebiscite of free choice, such as the public law contemplates, is not invalidated.

This affirmation is inexact because in the three plebiscites held in the nineteenth century the popular will was not prostituted, the triumph of the country granting the cession being due to those to whom the right of suffrage was given.

The plebiscite of free choice, to which Mr. Seoane alludes, does not exist as an international political institution. The nations never have accepted it seriously. In the conference of London of 1864 all the great powers there represented manifested themselves opposed to it. And if, in the field of theory, the plebiscite doctrine has been sustained by some publicists, it is to-day completely abandoned.

No other institution of plebiscite is known, then, than that which diplomatic history registers, according to which in all the documents in which the popular will is mentioned as a condition of transfer of territory, it is, the cession being agreed upon beforehand, with the characteristics of an act consummated.

Even Mr. Seoane sees himself later obliged to recognize that this, in reality, is the true force of the situation.

Understanding, moreover, the true object of the plebiscites, and that his affirmations have no historical basis, he assumes to explain those precedents in the manner most favorable possible to the cause of his country. He says that the precedents are indecisive in regard to the authority which shall preside over the carrying out of the plebiscite, and then, in two of the three cases which have occurred,

it has been that of the cedent country; and that, in regard to those called to exercise the right of suffrage, they have always been the original inhabitants of that portion of territory transferred.

In order to arrive at these deductions he has had to confound the mere material realization, we might say, of this voting with its true political force.

The only explanation which the publicists give, and the only one possible, in harmony with the principles of public law, concerning the country which has charge of the direction of the plebiscite, is that that country has not proceeded in its character of a cedent, except by exercising actual sovereignty, and by suffrage being one of the fundamental attributes of that right.

Even Mr. Seoane charges himself with giving us the proof of that assertion.

He maintains that the precedents are not uniform, since in two of the cases which have occurred, the operation was put into effect under the direction of the cedent country, and in the other (the case of the Lombard-Venetian Kingdom) under the cessionaire country; and, moreover, that in those two cases there was a lack of logic on the part of the cedent country, since if the transfer was agreed upon, the direction of the plebiscite should have been left to the cessionaire country.

But if we examine the precedents in due form, a contrary conclusion is reached, which is that they have been uniform, and that the supposed want of logic is perfectly explicable and justifiable. There is uniformity because in the three cases of plebiscites which have been held they have been effected under the direction of the country which exercised the actual sovereignty. And the supposed want of logic does not exist, because a State, in spite of the fact that it might consent to the transfer of its territory, could not abdicate its sovereignty before the cession was consummated.

The right of suffrage, in its turn, has been granted to the natives of the region for the cause already stated, and not for the reasons which his excellency Mr. Seoane judged convincing.

II.

If by the treaty of peace Peru placed under the sovereignty of Chile the Provinces of Tacna and Arica, stipulating moreover that a plebiscite should decide the definite nationality of that territory, it is logical to suppose that the negotiators of the pact for some reason thought of the procedure in the form in which the history of the institution presents it.

The truth deduced from the events of the war of the Pacific, and the truth from the various negotiations of peace which preceded the treaty of 1883, prove, without doubt, that the plebiscite intended was of the same character as those of its kind; that is, a chosen means for facilitating for the Government of Peru the celebration of peace, proportioning to her a form which would permit her to accept the demand of our country for the cession of Tacna and Arica, without wounding the national feeling.

The first negotiations took place in October, 1880, on board the United States corvette *Lackawanna*, in the presence of two representatives of that Government, which intervened as mediator, and

some time before the war reached its end; that is to say, long before the allied military forces would have found it impossible to oppose an effective resistance to Chilean arms.

In those conferences our representatives exacted, *as conditions essential to peace*, among others, the cession to our country of the territories which extended to the south of the Valley of Camarones, or Tarapaca, on the part of Peru; payment to Chile by Peru and Bolivia combined of 20,000,000 pesos; retention on the part of Chile of the territories of Moquegua, Tacna, and Arica, until all the obligations of the treaty are fulfilled; and, finally, an obligation, on the part of Peru, never to arm the port of Arica, which should have an exclusively commercial character.

The representative of Peru, having manifested that the cession of any part whatever of her territory was wholly unacceptable to his Government, because such a basis of arrangement would be repudiated by the public opinion of his country; and the representatives of Chile having stated that the conditions of peace could not be abridged, the conferences came to an end.

Belligerent operations then continued in various campaigns, all favorable to the army of Chile, and giving as a result the occupation of Lima, the complete destruction of the military forces of Peru and the absence in that country of a stable and regularly constituted Government.

Chile, without taking advantage of the victory, could then impose in justice, for the celebration of peace, conditions more rigorous than before, which would compensate her for the prodigious sacrifices of all kinds occasioned by the war, and which would assure her for the future a military frontier in the north.

The demands of our country were clearly set forth in the following paragraph of the circular of May 26, 1901, directed by the Peruvian Government to the chancelleries of Europe and America, giving account of the motives which induced her to sever her relations with our country:

The victories which afterwards (October, 1880—conferences on the *Lackawanna*) Chile attained awoke greater ambitions; and a year later, 1881, the cession of Tacna and Arica was presented as a condition *sine qua non* of peace, in the negotiations which were opened during the following years.

Without the concurrence of her ally of 1879, or of a mediator as in 1880 and 1882, Peru, being unable to continue with success the hostilities, had to resign herself to consent to the unescapable territorial sacrifices which she had until then resisted.

The assembly of Cajamarca, having vested Gen. Iglesias with the character of president regenerator of Peru, and commending to him the prompt celebration of a treaty of peace, concentrated its forces on making the territorial dismemberment in a form which would not wound the sentiment of the citizens, a point in which the Chilean Government coincided, with the object of securing to the new Peruvian President the support of opinion, and securing thus the celebration of a durable peace.

The Chilean plenipotentiaries, statesmen as they were, sought a form which would reconcile the demands which our country considered could not be mitigated with the susceptibilities of Peruvian patriotism. This consisted in asking the direct and unconditional

cession of Tarapaca, which already opposed no resistance, and the indirect cession of Tacna and Arica—the direct was resisted even in the form of a sale—by a procedure appropriate to the situation, which it was not difficult to find in the history of the plebiscite.

The plebiscite, in effect, would permit the public opinion of Peru to entertain the hope that the territories of Tacna and Arica would remain only temporarily under our sovereignty; and that, the period of 10 years having expired, the vote of the citizens of that region would restore them to their former nationality.

On its part, the Government of Chile considered that period would suffice for that opinion to become convinced that those Provinces should remain definitely incorporated in our country, without plebiscite or by means of a mere form.

Gen. Iglesias signed, on the 10th of May, 1883, a preliminary compromise in which were established the conditions under which he was disposed to subscribe to peace, in conformity with the formula of the Chilean plenipotentiaries.

In this same historic moment, the majority of the Peruvian people pronounced themselves openly in favor of the Iglesias administration, which, in fact, meant the acceptance of preliminary bases. Chile, then, lent her pecuniary and military aid to consolidate the new Government; and, this result attained, the pact of peace was signed on October 20 of the same year, which was only a reproduction of the conditions expressed in the act of May 10.

This is, then, succinctly stated, the logical explanation of the reason for the stipulation of the plebiscite for Tacna and Arica, and, at the same time, the explanation of the object for which it was invoked.

It is not, consequently, as assumed by Peru, on account of her resistance to the cession of Tacna and Arica that Chile desisted from her purpose to annex those Provinces and consent to bind herself in all seriousness to a plebiscite, without precedents in the history of diplomacy.

It would have been stupidity on the part of the Chilean negotiators had they, their country considering that territory as an indispensable pledge of peace in future, renounced the purpose of acquiring its sovereignty only in view of a merely passive resistance by the Peruvian representatives.

A procedure different from that of the plebiscite, but with an analogous object, had been employed by our chancellery a little after the pact of Ancon, for the purpose of minimizing the resistance which Bolivia, ally of Peru in the war, opposed to ceding the seacoast of her territory, which was necessary to us in order to avoid breaking continuity with the Province of Tarapaca.

On April 4, 1884, an indefinite treaty of truce was signed, which, given its stipulations, was rather a treaty of peace. By article 2 of said pact, Bolivia left, herself fixing the respective boundaries, her seacoast territory, occupied then by our arms, under the sovereignty of Chile.

Since the celebration of this treaty, no one has doubted, either in Chile or Bolivia, that the mentioned zone was destined, in reality, to remain incorporated indefinitely in our territory. On this hypothesis all subsequent negotiations by Bolivian statesmen for a definite treaty of peace tend only to obtain a port on the Pacific, an aspira-

tion which Chile always respects, but which she could never satisfy because its realization would leave our territory without continuity.

The governing Bolivians, as experienced politicians, on negotiating the treaty of peace of October 20, 1904, expressly recognized the annexation of that territory to our country, as being on that date an act consummated.

* * * * *

Not only did the negotiations which preceded the treaty of Ancon assume that the plebiscite was a means employed to attain disguisedly the sovereignty of Tacna and Arica, but also the very editing of the pact and other circumstances confirmed it.

Article 3 of the treaty bears a singular analogy to the stipulations for plebiscite contained in the treaties of Turin of 1860, and of Paris of 1877, which, as we have said, signify simple forms of territorial cession.

The first of these treaties says in effect:

It is understood that reunion will be effected without any restraint upon the will of the people, and that the Governments of the Emperor of France and of the King of Sardinia will arrange as soon as possible the best means of estimating and registering the expressions of that will.

And the treaty of Paris:

* * * that retrocession is made under the express condition of the consent of the population of St. Bartholomew, and *en outre*, under the conditions enumerated in a special protocol which will be attached to the present treaty and considered as forming an integral part of it.

The treaty of Ancon establishes in its turn in part 2 of article 3:

A special protocol, which will be considered as an integral part of the present treaty, will establish the form in which the plebiscite ought to take place * * * etc.

The simple reading of these antecedents dispenses with further comments and reasonings.

On the other hand, if the plebiscites of 1883 should have been agreed upon in all seriousness, its negotiators would have given it express and formal definiteness; or would have fixed in the pact itself the conditions for celebrating the plebiscite; or would have referred to another protocol signed together with the principal convention, as was done for certain matters in the treaty of Vienna of October 3, 1866 (Art. VII) and the treaty of Paris of August 10, 1877 (Art. I); or, finally, they would have determined, at least, the means of resolving the difficulty which could have been presented with the motive of discussing the later protocol. And the reason is evident: The negotiators, knowing that on the hypothesis which we discuss, there would exist interests opposed and entirely irreconcilable between both countries, knew before hand by that fact alone that by not adopting at once any of the means before indicated they made impossible all subsequent agreement.

And it should not be said that in this the negotiators were guilty of an oversight because, precisely, in the pact itself and for other matters of less interest, are found laid down different measures which we here indicate. Thus, in articles 4 to 8 the rights and obligations of Chile are minutely regulated with respect to the sale of 1,000,000 tons of guano; in 8, the obligations which may be contracted with

respect to the credits which affect the ceded territories are limited; in articles 9 and 10 the exploitation of guano in the Lobos Islands is regulated; and 11 determines the mercantile relations between both countries. Moreover, in a complementary protocol, signed the same day as the principal pact, matters relating to the Chilean Army of occupation are established; and, finally, article 12 of the treaty establishes that the indemnities which shall be given by Peru to the Chileans who have suffered damage on account of the war shall be determined by an arbitration tribunal in the form indicated in that article itself.

So then the omission which we note with respect to the protocol relating to the plebiscite is deliberate, and can not be explained except as an explicit recognition that the plebiscite stipulated was of the same nature and had the same object as the others registered in the history of international law.

In corroboration also of what we say is the circumstance that article 3 itself of the pact of 1883, which stipulated the plebiscite, did not leave for the subsequent protocol but fixed itself the sum which the nation which should be definite sovereign of the territory should pay to the other.

The economic situation of Peru at that date, and that which the negotiators could foresee 10 years afterwards, which would make impossible certainly the payment of 10,000,000 pesos, establishes the belief that they deemed it fitting to determine in 1883 (and not to allow that it should run the same risk as the conditions of the celebration of the plebiscite) the amount which Chile should pay to Peru for the simulated cession of Tacna and Arica.

There is still another consideration, as much or more decisive than the others. In 1880, in the conferences on board the corvette *Lackawanna*, Chile proposed as one of the essential conditions for the celebration of peace that Peru should promise, after the return of the port of Arica, not to fortify it at any time. It would be truly incomprehensible that three years afterwards, in 1883, when Chile was master of the situation, she should have renounced this demand, which she considered always as irrevocable.

The lack, then, of this demand in the pact of Ancon could not be satisfactorily explained if it were not admitted that Chile considered that the treaty assured her definitely of the sovereignty of the provinces mentioned.

Finally, the parliamentary and public opinion of our country give to the pact of Ancon the force which in reality it had in the conception of its negotiators.

The parliamentary minority of 1883, which maintained a tenacious resistance to the Government, did not wish to let pass without observation an act of so transcendent importance and prestige for the administration of Santa Maria, and made some criticisms of the treaty of peace; but not one of them turned upon the question of Tacna and Arica. "That objection," said Luis Aldunate, one of the negotiators of the pact in his character as minister of foreign relations, "would have appeared senseless in that epoch in which no one doubted for a single instant that giving to Chile possession of these provinces was synonymous with giving her dominion over them." (The treaties of 1883-84. Santiago, 1900, p. 215.)

III.

So penetrated is his excellency, Mr. Seoane, with the idea that it is impossible for an impartial spirit to see in the plebiscite stipulated in the treaty of Ancon an agreement of the same nature as others of the kind that, in his note of May 8 of the present year, he devotes himself by preference to proving that the nature of this pact is not the same as other agreements for plebiscites celebrated in Europe.

He founds his reasoning on the history of the negotiations of the pact of 1883 and on the procedures which since 1892 have been carried out between the two Governments for establishing a basis for the celebration of the plebiscite; on the other circumstance that said pact does not expressly stipulate cession, as analagous agreements have done; and on the circumstance, also, contrary to other like agreements, that the appeal to the popular will would not be made immediately but 10 years afterwards.

In respect to the first argument, we have already sufficiently demonstrated that the negotiations referred to and the military, political, and economic situation in Peru in 1883 establish precisely the contrary to that which His Excellency Mr. Seoane assumes.

As to the negotiations which since 1892 have been carried into effect between the two Governments for agreeing upon a basis for a celebration of the plebiscite they prove, as we shall see further on, not that Chile has not seen in this pact a cession, but only that she has not wished to allege one; that is to say, that in the course of said negotiations Chile has never assumed, as she does not assume now, to emphasize her rights, wounding the national sentiment of Peru. Always, on the contrary, she has been most solicitous in her pains to arrive at that result by means of a sincere and friendly agreement, proposing to the Chancellery of Lima that she should renounce the celebration of the plebiscite or that this should be effected on equitable bases, in which she has faith, but which, nevertheless, are capable of giving the triumph to Peru.

It is not strange, then, nor a matter for wonder, as Mr. Seoane wonders, that in some official communications and other diplomatic documents of Chile, especially in the Chile-Bolivian treaty of 1895 (a treaty which was not put into effect) the possibility that the Provinces of Tacna and Arica may return to the sovereignty of Peru is talked of or admitted.

The third argument has no more value than the foregoing ones.

In the pact of 1883, the cession of Tacna and Arica appears with the same characteristics as the cessions of territory in other agreements concerning plebiscites. In the pact it is not said, it is true, that Peru *ceded* to Chile Tacna and Arica, owing to this cession remaining submitted to a later plebiscite; but, on the other hand, it is said that our territory "will continue possessed by Chile and subject to Chilean laws and authority," which expression is equivalent to the former, since in international law there is no difference between *ceding* a territory and *placing it under the sovereignty of another country*, since the essential and characteristic of a cession is that the territory shall remain subject to the sovereignty of that country acquiring it. If the word cession was deliberately omitted it was pre-

cisely for the purpose of avoiding the susceptibilities of the Peruvian people.

Finally, as to the argument of Mr. Seoane on the difference in time for the celebration of the plebiscite which exists between the pact of Ancon and those which have preceded it, far from having the importance which he attributes to it, it has its natural significance.

In those cases which history registers, the plebiscite has been carried into effect a short time after its stipulation because it treated of a cession which was not resisted by the country which made the transfer. In the case of Tacna and Arica, as it treated of a resisted cession, which it was desired to make without violence, there was fixed the period of 10 years, a lapse of time which was esteemed necessary in order that the Peruvian people might resign themselves to seeing definitely incorporated into the sovereignty of Chile, without plebiscite, or by means of one which would give the triumph to our country, a portion of territory which they believed to be only temporarily in our power.

This is the only explanation of the period fixed, because the Chilean negotiators would have proceeded with absolute lack of experience if, agreeing upon a serious plebiscite, they had supposed that our country would in 10 years conquer the will of the original inhabitants of Tacna and Arica, or if they had sought, in that lapse of time in which the territory was placed under our sovereignty, an indemnity of war, since they knew that the estimated costs of those provinces would impose upon Chile a considerable loss.

These causes alleged by Mr. Seoane, then, for maintaining that the plebiscite of the pact of Ancon is of a different nature from those of like character registered by diplomatic history having no value, it remains perfectly clear that said agreement could have no other object than that of facilitating territorial cession.

* * * * *

The plenipotentiary of Peru gives such importance to the period of 10 years stipulated in the pact of 88 that he even maintains that from March 28, 1894, the date on which those 10 years expired, our country ceased to be sovereign of Tacna and Arica, and that that sovereignty has passed in full to Peru.

This assumption, as we have demonstrated before, has for its object only to give pretext for a thesis that the Government of Peru is forced at all costs to sustain; that our country, by not actually exercising sovereignty in Tacna and Arica, can not preside over the operation of the plebiscite.

The period which the pact of 1883 fixed for the celebration of the plebiscite is of like nature with those fixed in the plebiscites which the history of the institution registers, and changes in no manner the nature of the cession, because that lapse of time—10 years—does not place an end to the exercise of Chilean sovereignty, but is a minimum period before which a consultation of the popular will could not be made.

The disposition of article 3 of the treaty of Ancon is conclusive in this respect:

At the expiration of that term (10 years) a *plebiscite* shall, by means of a popular vote, decide whether the territory of the provinces referred to is to remain *definitely* under the dominion and sovereignty of Chile, or *continue* to form a part of the Peruvian territory.

As our chancellery observed with much exactness in its communication of March 15, 1905, Peru ceded to our country, according to the tenor of the pact of Ancon, full and absolute sovereignty over Tacna and Arica without any limitation in regard to *its exercise*, and limited, in regard to its *duration*, only by the event of the plebiscite declaring in favor of a return to Peru.

Only in this case would those provinces return to Peru to *continue* forming a part of her territory, as they were before 1883. That is the true significance of the word *continue*, and to give it other is to destroy article 3 and place that term in contradiction to the word *definitely*, which the same pact employs to indicate the sovereignty which Chile will exercise if the plebiscite results in her favor. And it is an elementary rule of the interpretation of treaties to seek for accord or harmony in their dispositions in place of giving them a force which makes them appear contradictory.

If neither the plebiscite, although it had been agreed upon seriously, nor any other more effective condition, could change or diminish the complete exercise of the sovereignty of Chile, it remains hers with greater reason when, as in the present case, the plebiscite is a mere form and destined in the minds of those who arranged it not to have a true practical application.

In respect to the prolongation of the period of 10 years which the chancellery of Lima states that the chancellery of Santiago solicited in 1894, this is to have been effective—since there is no verification of the incident in the archives of the ministry of foreign relations in the Monada—would have proved only that a prolongation of the period was solicited for the celebration of the plebiscite, but not for the exercise of sovereignty in that region.

So, then, the expiration of the period of 10 years in no manner put an end to Chilean sovereignty in Tacna and Arica, and, less still, returned it *ipse facto* to Peru.

Neither the letter nor the spirit of the pact of 1883 authorizes this interpretation.

If it were thus, it would result that no celebration of the plebiscite would suit Peru better than if it were verified, since in this case that territory would not return to her sovereignty except in the event of the voting being favorable.

Finally, if the negotiators had wished to confer upon Chile the simple right of occupation for a limited time of Tacna and Arica, they would have done so in a formal and express manner, as was the case in article 9 of the treaty of Ancon for the Lobos Islands. The article disposes in respect to those islands that—

they shall continue to be administered by the Government of Chile until the extraction of 1,000,000 tons of guano from existing beds has been completed in conformity with the stipulations in articles 4 and 7. They shall then be restored to Peru.

The remaining of Chilean authority in Tacna and Arica since March 28, 1894, is, in consequence, very far from being "evidently illegal," as Mr. Seoane affirms. The Government of Peru itself has not dared always to sustain this thesis; and on one occasion it solemnly recognized that the Provinces of Tacna and Arica were under the full sovereignty of Chile.

Article 2 of the treaty of delimitation of frontiers between Peru and Bolivia, celebrated September 23, 1902, and ratified January 30, 1904, says:

The high contracting parties agree on proceeding, according to the stipulations of the present treaty, to the demarcation of the line which separates the Provinces of Tacna and Arica from the Bolivian Province of Carangas, *immediately after they are returned* to be under the sovereignty of Peru.

So that the territories mentioned, according to the Peruvian Government's own words, are at this date under the sovereignty of Chile.

IV.

The considerations hitherto expressed clearly show the right of Chile to maintain that the Provinces of Tacna and Arica have been ceded by the pact of Ancon; that the plebiscite stipulated is a mere form; and that, consequently, as in the case of all plebiscites held to this day, it should be celebrated under conditions which should give a result favorable to annexation.

Apart from this consideration, and in conformity with the principles of public law and diplomatic precedents, the act, in the event of being carried out, ought to be under the exclusive direction of Chilean authorities; and in order to reach a favorable result, the right to vote belongs solely to Chilean residents in Tacna and Arica, because they are the nationals of the country which exercises sovereignty and are disposed to vote in favor of annexation.

The Government of Chile, nevertheless, inspired with the same motive of conduct as the European nations to-day pursue in the armed conflicts, that is to say, forgetfulness of the past and unification of their interests for the future, have carefully abstained, since the treaty of 1883, from alleging that said pact involved a cession of territory. And, without abandoning in the least their proposition to incorporate Tacna and Arica into Chile's sovereignty, they have managed to obtain that result, availing themselves of entirely tranquil and friendly means.

This explains why our chancellery offered to Peru, a little after the pact, in 1888, 1889, and 1890, and before the country initiated action concerning the celebration of the plebiscite—as witnesses the Errazuriz-Bacourt protocol of July 23, 1892, and of the Peruvian circular of May 26, 1901—4,000,000 pesos more than those already stipulated, on condition that she would consent to recognize directly and immediately the definite annexation of Tacna and Arica to our territory.

This explains also why, since the initiation on the part of the chancellery of Lima of steps for the celebration of the plebiscite, our action, in place of alleging that this act ought or ought not to be carried out, or that being put into effect it should be a mere form, placed no obstacle in the way of entering into negotiations on its celebration, except on the more equitable basis which we indicated, in which we had complete faith for success, but which, nevertheless, involved the said possibility of giving the triumph to Peru.

These bases are: That the plebiscite should not be to the detriment of the sovereignty of Chile in Tacna and Arica, and that the voting on the plebiscite should be in conformity with the pact of Ancon, truly *popular*, that is to say, that the right of suffrage shall

be given not only to Chileans and Peruvians resident in Tacna and Arica, but also the foreign element which are here found rooted.

In conformity with the same political proposition which inspired Chile with respect to Peru, she has abstained from raising the question of the majority of votes which would be necessary in order that the provinces of Tacna and Arica should return to Peru.

In this matter, the condition of both countries is quite different: Chile exercises full sovereignty over that territory, and Peru has only a mere expectation of recovering it.

Our country has, then, a perfect right to demand that it shall not be the will of the simple majority of the voters which shall deprive her of that sovereignty, but a much larger number of voters, seeing that the treaty of Ancon says nothing on this subject, and that the doctrine of the absolute majority has no application in international law.

On this point Chile can invoke not only the general opinion of the publicists (especially Lieber, "De la Valeur des Plébiscites dans le Droit International" in the "Revue de Droit International et de Législation Comparée, T. III, 1871, p. 143), but also that opinion in a case which is well attested. Treating of the plebiscite of Schleswig, distinguished authorities on treaties held that for the northern part of this duchy to return to Denmark, as had been stipulated in article 5 of the treaty of Prague, unanimity of votes or a preponderating majority was necessary. (See Thudichum, in the "Revue de Droit International et de Législation Comparée, T. II, 1870, pp. 721-722.)

It is impossible, politically speaking, to give a more sincere proof of desires for international concord.

This excessive good will on the part of Chile is not the only testimony of friendly concord offered in homage to a true reconciliation.

Shortly after the war, Chile paved the way for tribunals of arbitration in diverse countries for payment to their nationals for damages caused by her sea and land forces on account of belligerent operations.

On the other hand, she has done nothing to obtain from Peru the payment of the indemnities stipulated in article 12 of the treaty of Ancon or of other pecuniary obligations arising also from the War of the Pacific.

But that is not all.

In spite of it having been stipulated in article 8 of the same treaty of 1883 that aside from the obligations contracted by Chile in favor of third parties she "would recognize no debts which may affect the new territories acquired by the present treaty, whatever may be their nature and origin," in spite, let us say, of that declaration, Chile, besides having subscribed with France to the Errazuriz-Bacourt protocol of July 23, 1892, which is not an analogous case, dictated the law of April 18, 1887, which authorized our Government to contract a foreign debt which would produce the sum of 1,113,781 pounds sterling for the payment of nitrate certificates contracted by the Government of Peru.

Nor is this all: Chile, desirous of giving new facilities to Peru for the payment of her creditors, subscribed with her to the protocol of January 8, 1890, which in its article 1, establishes that, with the

object of smoothing the difficulties which had been presented to Peru for the cancellation of her external debt, proceeding from the loans of 1869, 1870, and 1872, Chile "grants to her freely and spontaneously" the sums which are enumerated in said article.

There are, then, abundant reasons for affirming that the chancery of the Moneda has followed with all faithfulness, with respect to Peru, the policy of assuming greater obligations than those contracted in the pact of Ancon, and has not exercised the rights which said pact confers upon it, especially in what concerns Tacna and Arica. And this orientation, we again repeat, is owing to a purpose more elevated still: The desire not to have in her neighbor at the North an enduring enemy, but a sister nation which should know to forget the events of the past in order to take up fully the great political and economic problems which are theirs in common.

V.

Peru, viewing the problem only from the point of view of her own convenience, has not wished to accept the basis proposed by our Government for the celebration of the plebiscite, and believing, doubtless, that the circumstance of Chile not having alleged the true value of the pact of Ancon meant that she believed the stipulation was serious, she has assumed, as conditions of execution, that she is detached from the sovereignty which Chile now exercises in Tacna and Arica, and that the right of suffrage is conceded only to the original Peruvians of those Provinces.

What is assumed, in effect, is to make a mere form of plebiscite binding, that the said territory, shaking off Chile, should return by way of diplomacy what diplomacy in 1883 ceded to us, by the same plebiscite, for our tranquil future.

Laying aside these premises, it is not curious then that the Government of Lima and Peruvian public opinion should have had confidence in the triumph and believe that the celebration of the plebiscite will necessarily bring as a result the restitution of those Provinces to the sovereignty of Peru.

After many years of futile initiative and of broken relations between Peru and Chile, our chancellery invited that of Lima, in a communication of February 15, 1905, "to procure an agreement based on the interests and convenience of both Republics."

In a like sense His Excellency Mr. Riesco replied to the reception address of His Excellency Mr. Alvarez Calderon, adding that he was pleased to believe that the Peruvian Government would be inspired by like sentiments and purposes.

Our Government, wishing to be more explicit yet in the new political course which it deemed could lead to a satisfactory result, expressly declared, in its note of March 25 of the present year, that with the object of assuring to Peru forever the greatest cordiality of relations—

it would be disposed not to hold strictly the rights which accord with the spirit and the letter of clause 3 of the treaty of Ancon, nor to maintain itself exactly in the field in which publicists and diplomatic precedents place plebiscites, if on her part Peru will facilitate the arrangement and renounce her extreme pretensions, which will undoubtedly frustrate any solution.

In conjunction with this declaration, he proposed a series of joint agreements, which, by uniting diverse elements, would be considered as an indivisible whole which would include the following matters:

1. Arrange a commercial convention which shall grant exemption from customs to certain stated projects of each country that are of use in the other.

2. Celebration of an agreement for the promotion of the merchant marine and for the establishment of a line of steamers at the expense or by the subvention of the two Governments, with the object of developing a coast trade.

3. Association of the two countries for the realization of their resources and their credit in joining the capitals of Santiago and Lima by railway.

4. Arrangement of the protocol for establishing the form of plebiscite stipulated for the determination of the definite nationality of Tacna and Arica.

5. Arrangement to raise the amount of indemnity which the country acquiring definite sovereignty over this territory shall give to the other.

In this same note are placed in evidence the advantages resulting to the two nations from the adoption of the measures proposed.

A form which, in the conception of Mr. Puga Borne, would relieve considerably the financial operation referred to in the fifth agreement, causing it to lose the character of compensation which it had in the pact of 1883, would be to combine the payment "with the service of the debt which would be contracted for the construction of the international railway line."

His Excellency Mr. Seoane, far from accepting the solution of concord and fraternity proposed by our chancellery, declared that his Government "had laid aside that series of heterogeneous agreements," which had no relation with the plebiscite; which is of a political character; and that the only thing his country desires is the immediate fulfillment of the pact of Ancon in the part relative to the celebration of the plebiscite, because this matter "is of such importance that before it all others appear of second rank." He added that the actions which had been recommended "have for their object the fulfillment, not the modification, of article 3 of the treaty of peace;" and that the invitation which our Government directed to the chancellery at Lima "does not lay upon Peru the direct arrangement or exempt Chile from the formality of a plebiscite."

With this attitude, the Government of Peru disowns the history of the negotiations followed by both countries, and refuses to understand the terms in which the chancellery of Santiago has presented the solution of the problem, and the motives which have induced her to proceed in this way.

If in 1905 all negotiations relative to the later protocol to which article 3 of the treaty of Ancon referred were declared fruitless and if an invitation was given to Peru with the object and force determined, the chancellery of Lima should have declined it immediately if not disposed to accept it in this form, and not have proceeded to the naming of plenipotentiaries charged only to declare that they would not accept this orientation of our policy, and whose only mission to the present has consisted in wishing to continue in the field of fruitless negotiations.

The Peruvian representative added, moreover, as a fundamental of his refusal that a like refusal was given by our Government in 1893, when the Chilean minister in Lima made propositions on the part of Peru "of considerable similarity with the present."

Suffice it to observe to Mr. Seoane that such analogy does not exist; what was proposed in 1892 by the Peruvian Government was the return of Tacna and Arica in exchange for commercial agreements which were favorable to our country, which was equivalent to contradicting openly the force of the pact of Ancon; while that which Chile now proposes is very different: The binding of political and economic interests between the two Republics, and the celebration of the plebiscite on an equitable basis and not as a mere form as stipulated by the pact of Ancon.

* * * * *

It is appropriate now to examine the basis for the celebration of the plebiscite which our chancellery has indicated as one of the conditions for not alleging the true force of the pact of 1883, and which is the only matter concerning which Mr. Seoane wishes to centralize the negotiations.

These bases are the following:

1. That the plebiscite shall be effected under the direction of the Chilean authorities, as our country exercises sovereignty in that territory.

Mr. Puga Borne in this respect declares that the Government of Chile shall adopt the most adequate means in order that the consultation of the popular will shall not give rise to the slightest lack of confidence on the part of Peru; and adds that it does not seem unfitting "in order that our authorities, on establishing the electoral boards, should give representation on them to the citizens of Peruvian nationality and to the citizens of other nationalities; and

2. That those Chileans, Peruvians, and foreigners resident in Tacna and Arica shall have the right to vote, under certain conditions.

It seems unnecessary to us to add that the first basis proposed is the more equitable, in that, in conformity with the general principles of international law, it belongs to Chile to preside because she exercises full sovereignty over Tacna and Arica, and the plebiscite is an act which is referred to her. Mr. Seoane himself, in two passages of his note, recognizes that the plebiscite is an act which is derived from sovereignty.

As for the bearing of diplomatic precedents, they are, as we have already seen, unanimous in the sentiment that the plebiscite shall be carried out under the direction of the country which exercises sovereignty over that territory.

These principles have such irresistible force that the Government of Peru itself, convinced of it, and that according to historical precedents the plebiscite of Tacna and Arica ought to be carried out under the direction of Chilean authorities, has seen itself compelled—and especially His Excellency Mr. Seoane, in his note of May 28—to make the strange affirmation on which we have just dwelt: That our country does not now exercise sovereignty over that territory, because in 1894 the period of 10 years which the treaty of Ancon granted to Chile for the exercise of this right expired.

The history of the transactions between both countries furnishes, moreover, unequivocal data on which, in the conception of Peru, the country which exercises the sovereignty is that which ought to preside over the operation of the plebscite.

In the conference celebrated and protocolized in Lima, June 19, 1893, between the minister of foreign relations of Peru and the plenipotentiary of Chile, to determine the basis for the celebration of the plebscite, the former set forth that at the expiration of the 10 years granted to Chile for the occupation of Tacna and Arica she would return them to Peru, which was the sovereign of that territory, so that she might proceed to the celebration of the plebscite. (See the true force of this proposition in Pradier-Fodéré "*L'Amérique Espagnole*," in the "*Revue de Droit International et de Législation Comparée*," T. 29, 1897, p. 661.)

This proposition was immediately discarded.

In view of this refusal, in a conference protocolized June 30 of the same year the Peruvian chancellor proposed to our minister by way of adjustment, that those Provinces should be delivered on a designated date to a third power, under whose auspices the plebscite should be carried out, and which would immediately return the Provinces to the country in whose favor the voting resulted.

Said proposition was likewise discarded by our representative, who maintained that Chile had the right to occupy the territories referred to until Peru should fulfill all obligations which clause 3 of the treaty of Ancon imposed upon her.

Finally, under date of August 19, 1893, the minister of foreign relations of Peru sent to our minister, Mr. Vial Solar, a memorandum which establishes the following:

The plenipotentiaries of Peru and Chile, not having agreed as to which of these Governments has the right to occupy the territory of Tacna and Arica during the plebscite of which article 3 of the treaty of Ancon treats, it is agreed that Peru shall possess the zone comprehended between the River of Sama and the Valley of Vitor, and that Chile shall continue in the tenancy of the zone between this last valley and that of Camarones. On March 28, 1894, there will be delivered to Peru that part of the territory referred to and within 30 days following each country will dictate the arrangement of proceedings for the voting in its respective zone, remaining at liberty to point out the personal requisites of the voters.

These propositions were also discarded, because they did not take into consideration the interests of Chile.

In a conference between the minister of foreign relations of Peru and our plenipotentiary in Lima, protocolized under date of December 7, 1893, the Peruvian chancellery asked, as a preliminary basis for going to vote, that there be submitted to arbitration, among other points, that of determining which of the two countries held possession of Tacna and Arica after March 28, 1894. The minister of Chile rejected this proposition, adding that the Peruvian Government ought to have complete faith in the honor and loyalty of Chile, and that to give proof of it, he held it not unfitting to make binding appropriate guaranties. The minister of foreign relations of Peru then asked if there could be included "the intervention of Peruvian functionaries in the act of the plebscite."

From all those actions and declarations is deduced, then, that in the conception of Peru, the plebscite ought to be carried out under

the direction of the State which exercised the sovereignty in that zone.

* * * * *

Mr. Seoane refused and characterized as absurd the second proposal by our chancellery for the celebration of the plebiscite; that is, that not only the Chileans and Peruvians resident in Tacna and Arica should have the suffrage, but also the foreigners.

In the sense of the Peruvian representative, only the natives of that territory should enjoy the right of suffrage, and not foreigners or Chileans, because the latter are, in his judgment, as much strangers in that region as those of any other nationality.

Such a pretension, sustained many times by the chancellery of Peru, and explicable solely by exaggerations of the popular sentiment, is that which, in reality, merits the characterization which it gives to the Chilean proposition.

The demand that in the plebiscite only the original Peruvians of Tacna and Arica should vote, founding itself on the supposition that this is the spirit of the pact of Ancon, would oblige one to suppose in the Chilean negotiators an absolute lack of perspicacity and political sense, in that they would appear to have entered seriously into a proceeding of well-known import, with results foreseen and contrary to the purposes of Chile. If they had admitted that Tacna and Arica should return to the power of Peru, they would have expressly so stated, in place of binding themselves to a proceeding which, if it is justifiable to disguise a cession, is absurd for the return of territory which it had no intention to acquire.

Neither is it said that the period of 10 years is fixed in order that Chile could gain in that period of time the good will of the original inhabitants of the region indicated, since such an explanation would suppose that the negotiators forged deceptive illusions, incompatible with the foresighted judgment of any man versed in Government. They could not reasonably believe that 10 years of Chilean sovereignty in Tacna and Arica would change in our favor the sentiment of the citizens of that region. It would be to infer in them a gratuitous offense to suppose that they were ignorant or had forgotten the lessons of history, which show us territories for more than a century under powerful nations which, nevertheless, maintain alive to-day the sentiment of protest against that dominion.

Supposing, then, that the negotiators of the treaty of peace had bound themselves in all seriousness to the plebiscite, which can be admitted only by way of hypothesis, the period of 10 years being conceded in which our country might win converts to its cause, it could not in any case gain the Peruvian element, whose votes must be hostile to Chile, or the Chilean element, whose votes must be favorable.

It is clear, then, as regards the proposition of gaining good will, that the "arduous work of Chileanization," as Mr. Seoane said with very marked intention (a work which he declared futile) would refer exclusively to foreigners and in no manner to the Peruvians.

It would not be difficult for Mr. Seoane to believe that the Government of Chile never has had the purpose of changing the national sentiment of the Peruvians resident in Tacna and Arica.

So convinced is the chancellery of Lima that in the plebiscite not only the original inhabitants of that territory ought to vote, but also the Chileans and foreigners there resident, that more than once she

has proposed it to the consideration of our Government. (Memorandum presented to our chancellery by the minister of Peru to Chile, Feb. 23, 1894, and proposition presented by the same diplomat to the Chilean Government in October of the same year. Both documents appear inserted in the "Circular on the question of Tacna and Arica," published by the Government of Peru, pp. 200 and 221.)

Nevertheless, in the circular of 1901 to all the chancelleries, the Government of Peru again declares that, in its conception, there ought to vote in the plebiscite "only the native Peruvians of these Provinces, who have residence there."

On the other hand, Mr. Seoane, dissenting from the fact that the Chilean proposition is a condition proposed with the object of giving its true force to the pact of Ancon, impugns it with various arguments of no effective worth.

He alleges, in the first place, that even the minister of foreign relations of Chile himself, Mr. Luis Aldunate, as author of the present study, has sustained in some publications the doctrines that his Government now sustains.

A rectification sufficiently detailed of both opinions has been published in the *Mercurio* of Santiago, of June 18 and 20 of the present year. Such publication sets forth that in the articles mentioned by Mr. Seoane (those of Mr. Aldunate published in *El Ferrocarril* of June 7 to 30, 1900, bound later in a pamphlet; and ours, published in the same paper of the 5th, 6th, and 7th of April of the same year) the pact of Ancon, in the part relative to the celebration of the plebiscite, ought to be considered as equal to all the agreements of this nature, as a cession of territory. We, departing from the fundamental basis that the plebiscite must be a mere form, exclude from the right of suffrage the women and foreigners, an exclusion which lacks importance from the point of view of party, and which, without saying it, shows that the right of suffrage in our concept belongs only to the Chileans.

It is to be seen that Mr. Seoane does not share the views which dominate in said article, and which constitute its synthesis: The convenience with which Peru, abandoning vindictive aspirations over Tacna and Arica, may consent to recognize said Provinces as definitely incorporated in our country in exchange for liberal concessions of all kinds.

Other reasonings brought forth by Mr. Seoane are of a doctrinaire-philosophical character.

They are founded on the consideration that the plebiscite vote is an act of a political character and that in every act of this sort constitutional law excludes foreigners; that it is not possible to allow that the foreigners resident in Tacna and Arica should vote when the nationals of the rest of the Peruvian territory do not have this right, since thus the foreigners would be in the more advantageous political situation; that to concede to the foreign element the right of suffrage is equivalent to conceding them joint dominion, equal to the owners, over the territory which they temporarily inhabit, and that their vote in favor of Chile not only would mean the violation of neutrality which they as foreigners are obliged to maintain, but would be an effective step in the act of conquest.

In brief, all his reasoning can be summed up in the statement that foreigners ought not to mix in matters that are without interest to

them, or that, having an interest, it is in every case less than that of the nationals of the respective countries.

In this manner of arguing, Mr. Seoane confounds political suffrage, which is conceded only to the citizens of a country, and which is a matter of constitutional law in each State, with the plebiscite suffrage which belongs to international law and which is governed only by the will of the parties to it.

In an international plebiscite, which involves a simulated transfer, the stipulation "popular vote," "vote of the inhabitants," is restricted, as we have seen, to the nationals of the country which exercises the sovereignty, and natives of the region when those are decided partisans of the transfer of territory.

But in a serious and impartial plebiscite, as Peru assumes that one agreed upon in 1883 to be, those expressions—the first of which is found in the pact—ought to be taken in a wide sense which will comprehend above all the foreign element which, as neutral in the dispute, is best adapted in resolving it by that pacific method.

Accepting the argument of Mr. Seoane, we should have to admit as logical the paradoxical conclusion that foreigners could never decide as arbiters in an international conflict.

If it treated of matters which only affect the nationals of a country there is no doubt that perfect reason would attend the argument of Mr. Seoane. But in the present case we are not concerned with who has the more interest in Tacna and Arica, the nationals or the foreigners. What concerns us is the resolving of the conflict in which Chileans and Peruvians hold contrary opinions. In such circumstances, the foreign element is naturally the more apt if not to resolve, at least to contribute to a solution of the difficulty. Its quality of neutral in the question of national *amour propre* and that of interested party in the prosperity of the region would permit it to estimate, in just measure, which of the two countries ought to exercise definite sovereignty in the territory.

Finally, as to the diplomatic precedents invoked on this point, they are entirely unfavorable to the cause of Peru; because, as we have always also had the occasion of setting forth and demonstrating, that which may be deduced from them is that in the operation of the plebiscite only the elements take part which, within their respective territory, are found more disposed to vote in favor of annexation.

* * * * *

Mr. Seoane himself, who in order to combat the basis proposed by our Government for the celebration of the plebiscite, invokes the diplomatic precedents, recognizes afterwards implicitly, when concrete propositions for the carrying out of the act are presented, that said precedents are unfavorable to him.

Thus he proposes as a basis for negotiations the Billingham-Latorre protocol, adapting to the opposing clause of that agreement "the positive precepts of diplomatic precedents, according to the principles of right and of justice."

The first part of this proposition is in every way unacceptable, because it attempts to revive an obsolete agreement which from the very hour of giving it publicity was categorically refused by public opinion in our country. This unappeasable resistance to the cited protocol explains, without the necessity of more comment, the reason why our Government, making itself a faithful interpreter of that

opinion, has declared on repeated occasions that it could not accept the clauses of that agreement, which should be considered as eliminated forever and incapable in future of serving as a basis of discussion between the chancelleries of Lima and Santiago.

To assume, moreover, as Mr. Seoane proposes, that the diplomatic antecedents of a plebiscite should be taken into consideration "according to the principles of right and of justice" is equal to demanding that those antecedents shall be taken into account, not as diplomatic history presents them, which is the only point of view from which the negotiators of the pact of Ancon have considered them, but in an entirely imaginary cause, which Peru formulates in defense of her interests.

V.

The chancellery of Peru has observed, in the controversy over Tacna and Arica, a truly extraordinary attitude; since it not only declared in its communication of May 8 of the present year that it would not take into account the Chilean propositions, but that it would hasten to give them publicity, with purposes which we do not attempt to explain. If we should attribute to this proceeding the significance which it has in diplomatic practice, we should be obliged to admit that Peru has wished to put an end to the negotiations proposed by our country.

Chile could, then, in view of that attitude consider herself released from her propositions for arrangement, and recover her complete liberty of action; but persisting in her desire to reach a friendly agreement she has confidence that it is not the intention of Peru to close the doors of a future approach.

Nevertheless our country—her Government and public opinion—does not now wish futile debates of a character more academic than practical and is opposed to continuing on this ground a discussion of chancelleries which renders rather more distant the solution of the difficulty.

Altogether it is fitting to examine the international situation created by the lack of agreement between Chile and Peru over the fulfillment of the pact of Ancon:

And this, well understood, in the knowledge that our Government persists in its purpose that Peru shall correspond to our policy of concord in a lasting agreement between the two countries.

Let us lay aside, then, the case which we would were only hypothetical, that Chile, not seeing the possibility of attaining this result, has resolved to give up all negotiations and to declare that, heeding the text and the spirit of the treaty of Ancon, she considers the Provinces of Tacna and Arica definitely incorporated in her sovereignty, and without other obligation, in conformity with the same pact, than the payment to Peru of 10,000,000 pesos in silver.

Aside from the question of this there exist between Chile and Peru entirely contradictory political interests.

Peru desires the reincorporation of those Provinces in her sovereignty, and Chile, actual sovereign over them, desires in her turn that they remain definitely incorporated in her territory. If that desire is worthy of respect, that of our country is more so, because it is founded not only on patriotic considerations, as in the case of Peru, but on reasons of security on her frontier tending to insure peace in

the future and on the desire of not separating herself from a territory which has for 30 years formed an integral part of her national unity.

The controversy, given the basis on which Chile has proceeded in these negotiations and the objective sought with them, is not susceptible of being submitted to arbitration.

In effect, if our country has not exercised the right which the pact of Ancon conceded to it, according to which Tacna and Arica have been ceded to it in a definite manner, it is only on condition that Peru assent, among other conditions, to the celebration of the plebiscite on the bases which are proposed to her. It is not, then, conceived to be possible to assume that the lack of agreement over them could be handed over to the decision of an arbitrary judge.

Laying aside the former consideration, a traditional motive of the policy of our country has been to consider that arbitration is generally the best means of resolving difficulties between nations and, as a consequence of this judgment, she has bound herself for existing conflicts or for future difficulties perhaps more than any country in America.

But, in spite of this homage to the principle, the Chilean Government does not fall into the error of considering it as a panacea for the solution of all classes of conflicts and disagreements, as proclaimed by certain spiritual philosophers guided by noble humanitarian aspirations rather than by the reality of international life.

In many matters and in many cases, as is proved by the history of nations, that method of settling discords is not possible or acceptable. The solution of difficulties is sought, then, in reciprocal good will, since this mutual understanding has been, in all epochs, the truest and most solid guaranty of peace between the States.

The case of Tacna and Arica presents a matter which for our country is of vital importance, because it refers to the security of its northern frontier and its sovereign rights; and, in the present state of international law, matters of that character are not susceptible of arbitrary solution.

To Chile, certainly, it is not possible to admit that the matter should be in doubt, and, in consequence, to pretend to hand over to arbitration the decision as to whether or not she exercises actual sovereignty in Tacna and Arica, or whether in such character she has the right or not to preside over the operation of the plebiscite.

Neither can she admit that there must be submitted to the same procedure the question of whether or not the Chileans and foreigners in Tacna and Arica have the right under certain conditions to vote, because to place this demand in doubt would be necessarily to reduce oneself to the absurdity of admitting that Chile had bound herself to a plebiscite that was favorable to Peru.

Chile, then, believes that if in the present difficulty an arbiter should intervene it should not be a judge who would decide in accordance with certain legal solemnities, but a collection of persons conscious of the political conveniences of that territory. These could not be other than the inhabitants of Tacna and Arica, including the foreigners who, as mediators between Chileans and Peruvians, would have the keenest interest in weighing the problem without any passion,

without distinctions of jurists, and attending only to the present and future convenience of that region.

* * * * *

The present conflict not being capable by its origin, antecedents, and character of being submitted to the decision of an arbitration tribunal, whatever may be the dissenting opinion, is susceptible of but one solution.

In conformity with a *strictly judicial* judgment, the lack of approach between the parties in arriving at an agreement which by the disposition of the pact of 1883 they ought to celebrate, makes impossible that agreement and, in consequence, means the ineffectiveness of said clause, but not that of the principal pact.

The reason of the latter fact is found in that this agreement, given the object and spirit which guided the negotiators, is not necessary for the subsistence of the treaty, in spite of the stipulation that it would be considered an integral part of the treaty, since all clauses which constitute or form a part of an international agreement are not of the essence.

The ineffectiveness of the clause referred to would give as a result the ineffectiveness of the eventuality by which Chile might lose sovereignty over Tacna and Arica, and she should remain the definite sovereign without other obligation than to pay to Peru the 10,000,000 pesos stipulated in the treaty of peace.

In conformity with a *political* judgment, the passing of time would create for the country which, without being definite sovereign of the territory, exercises with sufficient title authority over it, a right which will go on strengthening with the years, even to the acquisition, in an epoch which it is not possible to designate—since it depends upon circumstances—the character of permanency.

The foundation of this fact is found in that sovereignty by its very nature must be always effective, since it consists precisely in subjecting a portion of territory to its authority and laws. A *nudum jus* of sovereignty for an indefinite time is incomprehensible.

Moreover, the exercise of sovereignty goes on binding the interests of the country which exercises it to the respective territory; and that binding of interests, when it is complete, constitutes a fact of such importance and force that the sovereign state can impose it with the respect of all nations, with the character of a definite act on condition of giving an adequate indemnity to the other interested country.

If the passing of time should not confer sovereignty upon a territory and in the name of ideals of justice there should be given place to recoveries founded on historical right, the map of the world would be made over completely and replaced by another which would certainly be more arbitrary and unjust than the present one.

Laying aside the occupation of Egypt by England, let us cite in support of our assertion two very characteristic cases: The right of occupation and administration which Turkey granted to England by the treaty of June 4, 1878, over the island of Cyprus; and a like right granted to Austria-Hungary over Bosnia and Herzegovina, by article 25 of the treaty of Berlin of 1878.

With respect to this case—in these present moments of great reality—it suffices to observe that, notwithstanding the stipulation in

the agreement of April 21, 1879, between Austria and Turkey, destined to regulate that occupation, Austria has gradually gone on accentuating her rights over that territory and considering it as absolutely subject to her sovereignty. Lastly, and founded on motives of a political character which it is not opportune to expose, that country has declared by a circular to the chancelleries of all the powers signatory to the treaty of Berlin that she annexes Bosnia and Herzegovina definitely to her territory. Such declaration, in spite of its being unexpected and of the dangers which it holds for European peace, has not preoccupied the great powers—the same as the political emancipation of Bulgaria—except as they relate to the alterations of equilibrium established by the treaty, and because there is no agreement concerning the indemnities which ought or ought not to be given for said territorial modifications.

We do not wish to compare the case of Bosnia and Herzegovina with that of Tacna and Arica, because our right in these Provinces is not merely of occupation and administration but of complete sovereignty; because it is only a question which affects two countries and has no relation to any system of continental equilibrium; and because the pact of 1883 fixed the indemnity which ought to be given to the other country by that one which remains as definite sovereign of the territory.

Finally, considering the question with the judgment of *statesmen* who should be guided more by diplomatic precedents and political considerations than by the rigorous precepts of private law, Chile can ask of Peru the modification of the treaty of peace relative to the plebiscite, being able to give her in exchange an adequate indemnity.

On proceeding thus, she has in her favor the precedent of vital importance of the abrogation of article 5 of the treaty of Prague and also the counsel of illustrious publicists, especially Holtzendorff, who, apropos of the abrogation of this article, said that "it is fitting, from the point of view of international law and of peaceful relations between the States, that a stipulation should be abolished at an opportune time in a legal way, when in the passing of time it becomes clear that said stipulation can not be carried into effect and when its lack of determination constitutes only an element of turmoil and disquietude." ("L'Abrogation de L'Article V du Traité De Prague" in the "Revue de Droit International et de Législation Comparée," T. X, 1878, pp. 580-586.) Cf. Stoerk "Option un' plebiscit" (Leipzig, 1879, pp. 147-148).

* * * * *

Our chancellery, deferring to international public opinion which places itself each time more in the sense of solidarity of States, and convinced that in our epoch moral, political, and economic solidarity is the primordial law of nations, has manifested its will not to press to the limit the rights conferred upon it by the pact of Ancon over Tacna and Arica on condition that Peru should pave the way for an agreement more advantageous to herself and tending not to wound the national feeling.

The Government of Chile has proposed to her approbation a union of negotiations tending to bind the interests of both countries, and among them figures the celebration of the plebiscite on an equitable

basis in itself and susceptible of returning to Peru the sovereignty of those territories.

Chile has given in this manner, even to the limit her national dignity would allow, overwhelming proofs of her good will.

It is not possible to go further or to appear to favor new propositions. That which our country now awaits is that unequivocal proofs of equal good will shall be given it.

We are sure that this attitude of the Chilean Government carries to all friendly States the conviction of the justice that attends us and of the high spirit of cordiality which animates us in this long and debated question.

The chancellery of Santiago, on proposing such friendly agreements, has set forth in the most eloquent manner its desire to see bound together the vital interests of the two neighboring peoples, called to make straight in harmony the road of international life, which in spite of its ideals and horizons of progress is not exempt from inquietude and anxiety.

ALEJANDRO ALVAREZ,

Counselor of the Minister of Foreign Relations of Chile.

SANTIAGO, November, 1908.

TREATY OF PEACE AND FRIENDSHIP BETWEEN CHILE AND PERU.¹

[Signed at Lima, October 20, 1883.]

The Republic of Chile on the one part, and the Republic of Peru on the other, being desirous of reestablishing friendly relations between the two countries, have resolved to conclude a Treaty of Peace and Friendship, and for that purpose have named as their Plenipotentiaries, that is to say:—

His Excellency the President of the Republic of Chile:—Don Jovino Novoa;

And His Excellency the President of the Republic of Peru: Don Jose Antonio de Lavalle, Minister of Foreign Affairs, and Don Mariano Castro Zalvidar;

Who, having communicated to each other their full powers, and found them to be in good and due form, have agreed upon the following Articles:—

ARTICLE I. Relations of peace and friendship are reestablished between the Republics of Chile and Peru.

II. The Republic of Peru cedes to the Republic of Chile, in perpetuity and unconditionally, the territory of the littoral province of Tarapaca, the boundaries of which are: on the north, the ravine and River Camarones; on the south, the ravine and River Loa; on the east, the Republic of Bolivia; and on the west, the Pacific Ocean.

III. The territory of the provinces of Tacna and Arica, bounded on the north by the River Sama from its rise in the Cordilleras bordering upon Bolivia to where it flows into the sea, on the south by the ravine and the River Camarones, on the east by the Republic of Bolivia, and on the west by the Pacific Ocean, shall remain in the possession of Chile, and subject to Chilean laws and authorities, during the term of ten years, to be reckoned from the ratification of the present Treaty of Peace. At the expiration of that term a *plebiscite* shall, by means of a popular vote, decide whether the territory of the provinces referred to is to remain definitely under the dominion and sovereignty of Chile, or continue to form a part of the Peruvian territory. Whichever of the two countries in whose favor the provinces of Tacna and Arica are to be annexed shall pay to the other 10,000,000 pesos in Chilean silver currency, or Peruvian soles of the same standard and weight.

A special Protocol, which shall be considered as an integral part of the present Treaty, will establish the form in which the *plebiscite* is to take place, and the conditions and periods of payment of the

¹ This translation is taken from British and Foreign State Papers, vol. 74, p. 349.

10,000,000 pesos by the country which remains in possession of the provinces of Tacna and Arica.

IV. In conformity to the provisions of the Supreme Decree of February 9, 1882, by which the Government of Chile ordered the sale of 1,000,000 tons of guano, the net proceeds of that sale, after deducting the expenses and disbursements referred to in Article 13 of the said Decree, shall be equally divided between the Government of Chile and those creditors of Peru whose claims appear to be guaranteed by the guano.

On the sale of the 1,000,000 tons referred to in the preceding paragraph being completed, the Government of Chile shall, as provided for in Article 13, continue to hand over to the Peruvian creditors 50 per cent of the net proceeds of the guano until the debt be extinguished or the guano beds actually worked be exhausted.

The proceeds of the guano beds which may hereafter be discovered in the ceded territories shall belong exclusively to the Government of Chile.

V. Should any guano beds be discovered in the territories which remain under the dominion of Peru, it is agreed that in order to prevent a competition between the Governments of Chile and Peru for the sale of that article, both Governments shall previously agree in determining the proportion and conditions which each of them must observe in disposing of the guano.

VI. The Peruvian creditors, upon whom the benefit referred to in Article IV is conferred, shall submit themselves for the proofs of their securities and other formalities to the rules laid down in the Supreme Decree of February 9, 1882.

VII. The obligation which the Government of Chile accept, in accordance with Article IV, to hand over 50 per cent of the net proceeds of the guano beds actually worked, shall continue to bind them whether the guano be extracted in conformity with the existing contract for the sale of 1,000,000 tons, or take place by virtue of another contract, or on account of the Chilean Government itself.

VIII. Beyond the declarations made in the foregoing Articles, and the obligations the Government of Chile have voluntarily accepted by the Supreme Decree of March 28, 1882, which regulates the nitrate property in Tarapacá, the Government of Chile do not recognise any debts which may affect the new territories they acquire by the present Treaty, whatever may be their nature and origin.

IX. The Islands of Lobos shall continue to be administered by the Government of Chile until the extraction of 1,000,000 tons of guano from the existing beds has been completed in conformity with the stipulations of Articles IV and VII. They shall then be restored to Peru.

X. The Government of Chile declare that they will cede to Peru, from the day on which the ratifications of the present Treaty are constitutionally exchanged, their share of 50 per cent of the proceeds of the guano extracted from the Islands of Lobos.

XI. Until a special Treaty be concluded, commercial relations between the two countries shall be placed on the same footing as they were prior to April 5, 1879.

XII. The indemnities which Peru may owe to Chileans who have suffered injuries through the war shall be submitted either to a

Tribunal of Arbitration or to a Mixed International Commission, appointed immediately after the ratification of the present Treaty, in the form established by the recent conventions concluded between Chile and the Governments of England, France, and Italy.

XIII. The Contracting Governments recognise and accept the validity of all administrative and judicial acts done in obedience to the martial jurisdiction exercised by the Government of Chile during the occupation of Peru.

XIV. The present Treaty shall be ratified, and the ratifications exchanged as soon as possible within the maximum term of 160 days, to be reckoned from this date.

In faith of which the respective Plenipotentiaries have signed the same in duplicate, and affixed thereto their respective seals.

Done at Lima this 20th day of October, in the year of our Lord, 1883.

[L. S.]	MAR. CASTRO ZALVIDAR.
[L. S.]	JOVINO NOVONA.
[L. S.]	J. A. DE LAVALLE.

SUPPLEMENTARY PROTOCOL RESPECTING THE TEMPORARY OCCUPATION OF A PORTION OF PERUVIAN TERRITORY BY CHILEAN TROOPS.¹

[Lima, October 20, 1883.]

In the city of Lima, on October 20, 1883, Mr. Jovino Novona, Minister Plenipotentiary of the Republic of Chile, Mr. Hose Antonio de Lavalle, Minister of Foreign Affairs of Peru, and Mr. Mariano Castro Zalvidar, both plenipotentiaries *ad hoc* of the Government of his Excellency General Miguel Yglesias, having met to conclude the Treaty of Peace between the Republics of Peru and Chile, and acting in virtue of the authority vested in them by their respective Governments, as it appears from their powers and special mandate which have been examined and held sufficient for the negotiation of the Treaty of Peace signed on this date, proceeded to conclude the following Supplementary Protocol to the Treaty of Peace between the Republics of Peru and Chile:

ART. I. Until the Treaty of Peace signed in Lima on this day be made binding by the ratification of it by the Peruvian Congress, the Republic of Chile is authorized to maintain an army of occupation in that part of Peruvian territory where the General-in-chief considers its presence necessary, provided always that the forces which are to compose that army shall not in any way disturb or embarrass the free and full exercise of the jurisdiction appertaining to the Government of Peru.

II. In order to contribute towards the expenses which may be incurred by the Republic of Chile in maintaining the army of occupation, the Government of Peru shall, from the date of this Protocol, pay to the General-in-chief of those forces the sum of 300,000 soles per month, which sum shall be deducted as the first charge from the national revenue of Peru.

¹ This translation is taken from British and Foreign State Papers, vol. 74, p. 352.

III. The provisions and equipments of whatever kind which the Government of Chile may send to their army while the occupation lasts shall pass through the custom houses of Peru free of custom or municipal duties, and their clearance shall be effected without any formality other than the production of the manifest, with the permit of the General-in-chief affixed on it.

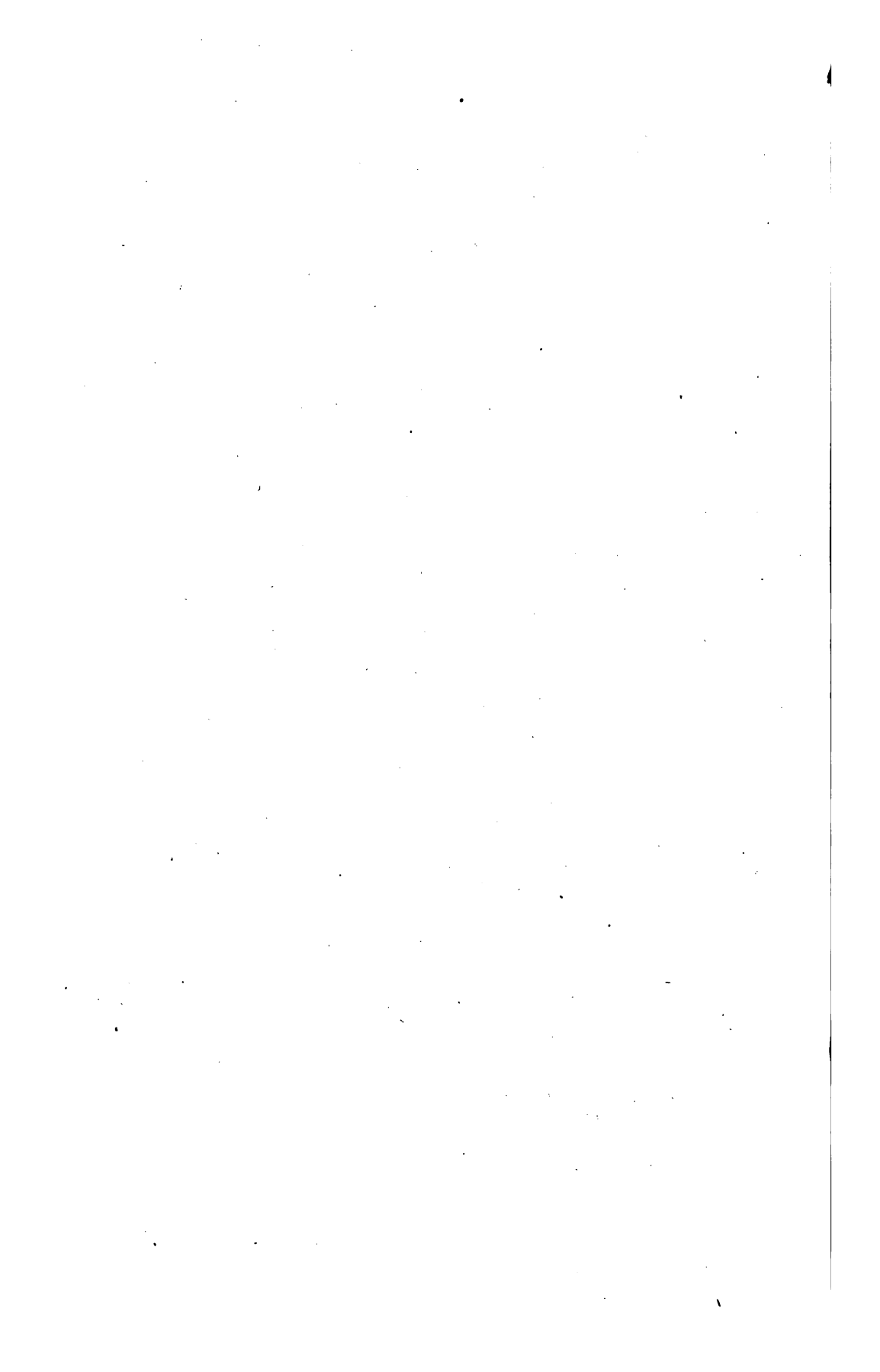
IV. The headquarters of the army of Chile shall make use of all the telegraphic lines of the State without payment, provided the telegrams are countersigned in the Secretary's office of the General-in-chief, or signed by the Minister Plenipotentiary of Chile.

V. The headquarters of the army of occupation shall also make use of the railway lines on the same conditions as those observed by the Government of Peru by virtue of the various contracts which it has entered into with the persons or companies that work such lines.

VI. As long as the General-in-chief of the Army of occupation considers it indispensable, the hospitals named "Dos de Mayo" and "Santa Sofia" in this city shall continue to be used by that army, it being permitted to place a military guard in those establishments for their protection and police.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Protocol, in duplicate, and sealed it with their respective seals.

[L. S.]	JOVINO NOVOA.
[L. S.]	J. A. DE LAVALLE.
[L. S.]	MAR. CASTRO ZALVIDAR.



ABSTRACT FROM
“ROSE BOOK” OF CHILE

PARALLEL STUDY

BY
BAILEY WILLIS

PARALLEL STUDY OF THE ARGUMENTS OF CHILE AND PERU ON THE QUESTION OF TACNA AND ARICA.

INTRODUCTORY NOTE.

The discussion from which this parallel abstract is made arose on the occasion of the Treaty of Peace between Bolivia and Chile in October, 1904.¹ The second clause of that treaty established a demarcation of the frontiers, including in the north and south line the boundaries of Tacna and Arica. The third clause proposed the construction of a railroad at the expense of the Chilean Government to run from the port of Arica to La Paz. Peru protested against the "acts of sovereignty" implied in these articles, and the accompanying interchange of diplomatic discussion followed.²

Subjects of discussion.

Rights of Peru and Chile in Tacna and Arica.

Limitations of Chilean authority.

Conditions which should govern the holding of a plebiscite under Article III of the Treaty of Ancon.

*Article III of the Treaty of Ancon.*³

"El territorio de las provincias de Tacna y Arica [gives boundaries] continuará poseído por Chile y sujeto á la legislación y autoridades chilenas durante el término de diez años contados desde que se ratifique el presente tratado de paz. Espirado este plazo, un plebiscito decidirá en votación popular si el territorio de las provincias referidas queda definitivamente del dominio y soberanía de Chile, ó si continúa siendo parte del territorio peruano. Aquel de los dos países á cuyo favor queden anexadas las provincias de Tacna y Arica, pagará al otro diez millones de pesos, moneda chilena de plata ó soles peruanos de igual ley y peso que aquélla."

"The territory of the Provinces of Tacna and Arica * * * will continue in the possession of Chile and subject to Chilean legislation and authorities during the term of ten years reckoned from the ratification of the present treaty of peace. This term having expired, a plebiscite shall decide by popular vote whether the territory of the Provinces referred to remains finally under the dominion and sovereignty of Chile, or continues to be part of the Peruvian territory. That one of the two countries in whose favor the Provinces of Tacna and Arica remain annexed shall pay to the other ten million pesos in Chilean silver or Peruvian soles equal to them in standard and weight."

¹ Boletín Mensual, Bureau of American Republics, vol. 20, June, 1905, pp. 16-21.

² Ministerio de Relaciones Exteriores de Chile: Comunicaciones cambiadas entre las Cancillerías de Chile y Peru sobre la cuestión de Tacna y Arica. (1905-1908.) Santiago de Chile, Imprenta Barcelona, 1908.

³ Ibid., pp. 233, 234.

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- I. Protest addressed by the Minister of Peru to him of Chile, with reference to acts of sovereignty proposed by Chile in the treaty of peace between Chile and Bolivia. Lima, February 18, 1905, pp. 1-17. (*Infra*, p. 71.)
 - II. Response of the Minister of Chile to him of Peru. Santiago, March 15, 1905, pp. 18-32. Invites conference. (*Infra*, p. 71.)
 - III. Reiteration of the protest of Peru. Lima, April 25, 1905, pp. 33-45. Acceptance of invitation to confer. (*Infra*, p. 73.)
 - IV. Response of Chile, insisting on his position and acknowledging acceptance of invitation. Santiago, June 5, 1905, pp. 46-47. (*Infra*, p. 73.)
 - V. Confidential communication from the Chilean Minister of Foreign Affairs to the Special Envoy of Peru, Sr. Seoane. Santiago, March 25, 1908, pp. 48-67. (*Infra*, p. 74.)
 - VI. Response of the Peruvian Envoy. Legación del Peru en Chile. Santiago, May 8, 1908, pp. 68-119. (*Infra*, p. 74.)
- B. Observaciones á la Nota del Excmo. Sr. Seoane by Alejandro Alvarez, consultor letrado del Ministerio de Rel. Extrs. de Chile. Santiago, November, 1908, pp. 122-227. (*Infra*, p. 80.)

A. DIPLOMATIC EXCHANGES BETWEEN CHILE AND PERU ON THE QUESTION OF TACNA AND ARICA, 1905-1908.

I. *Abstract of Protest addressed by the Minister of Peru to him of Chile with reference to acts of sovereignty proposed by Chile in the treaty of peace between Chile and Bolivia. Lima, February 18, 1905.*

II. *Abstract of Response of the Minister of Chile to him of Peru. Santiago, March 15, 1905.*

PERU.

Article 2 of the treaty between Bolivia and Chile, defining boundaries in part of Tacna and Arica, and Article 3, providing for construction of the railway from Arica to La Paz, oblige the Government of Peru to protest on the ground that these are "acts of dominion (authority) in the full exercise of possession and sovereignty, which according to indisputable international and civil right (law) belong only to the master and overlord (senor y dueno) and not to the possessor and mere occupant, which is the condition of Chile in the provinces of Tacna and Arica" (pp. 8 and 10).

CHILE.

Quotes the Peruvian protest as given in parallel column and says: "It is not difficult to demonstrate that this interpretation can not be reconciled either with the letter or the spirit of the treaty.

"In fact, your Exc. is aware that a section of territory belongs to that State, which with sufficient title has the power to occupy it and subject it to its authority and laws, and, since Article III of said Treaty (of Ancon) establishes that the territory of the provinces of Tacna and Arica 'shall continue possessed by Chile and subject to the legislation and authorities of Chile,' it is evident that Peru ceded to Chile the full and absolute sovereignty over these provinces, without any limitation whatever in regard to its *exercise*, and only limited in regard to its *duration* by the event of plebiscite, which is to be held after the lapse of ten years, to be counted from the ratification of the Treaty, as it declares." (Pp. 21-22.)

Peru, in continuing her protest, calls attention to the recognition of her rights over Tacna and Arica by Bolivia, as in the treaty between Peru and Bolivia of September, 1902, in which occurs the clause: "The High Contracting Parties agree equally to proceed * * * to the demarcation of the line which separates the provinces of Tacna and Arica from the Bolivian province of Carangas, immediately after these shall again be (literally return to be, 'vuelvan á estar') under the sovereignty of Peru" (p. 9).

Peru continues: "These being the facts established by the treaty of Ancon, they can not be modified or affected by agreement or stipulations in which Peru has not taken part.

The agreements between Bolivia and Chile could be binding only if they were made with the consent of Peru, or if the plebiscite should have resulted in favor of Chile. Neither of these things being true, Peru declares that she does not accept or recognize these agreements in any form or time and that they can not modify the legal condition of the territories of Tacna and Arica," in respect to which Peru continues to be owner of the title (dueno del dominio) and Chile the mere occupant and tenant, whose legal term had expired 10 years ago, in which interval the plebiscite should have been carried out (pp. 10-11).

Peru maintains (p. 12) that the question of Tacna and Arica is an international affair, governed by a treaty which lays obligations upon the nations that ar-

Chile seizes upon the final phrase "*immediately after these (territories) shall return to be under the sovereignty of Peru*" and construes it into an express recognition by Peru of the fact that they are *not* under the sovereignty of Peru, which is equivalent to a recognition that sovereignty is exercised by Chile (p. 25).

Chile replies (p. 25) to Peru's claim that Peru has retained dominion over Tacna and Arica by stating that: "The traditional doctrine of dominion and property which a State exercises over the territory subject to its jurisdiction tends to disappear (tiende á desaparecer) absolutely from modern international law, and there is to be considered only the civil law, which does not govern the relations between States. Furthermore, even within that doctrine (international law) it is well known that 'to the territorial sovereignty belongs exclusively the authority over all parts of its possessions, and from this point of view only, without reference to the international situation of the State, can it be said that it is proprietor of its territory'" (p. 26).

Chile does not reply directly to this point, except in so far as the discussion of precedents, given below, may be construed as an answer.

ranged it and sealed it with their public faith. It is subject to the rules of justice and to the imperative respect due to treaties.
* * *

Peru argues:

It is inconceivable that the provisions of the treaty of Ancon should not be complied with or that one of the parties thereto should make agreements with a third, which must necessarily be subject to the final condition of those territories, which is to be determined by the plebiscite.

The situation of Tacna and Arica is unique, claims Peru (p. 14), since there are no precedents for the case of a territory subject to a plebiscite in accordance with a public and obligatory treaty between two countries, but remaining in fact in the possession of one of them after the termination of the period fixed for the expression of the popular will.

Peru closes by insisting that the treaty of peace between Chile and Bolivia can not modify the treaty of Ancon or in any way control Peru or affect her rights in regard to Tacna and Arica.

III. *Second Communication from Peru to Chile, dated Lima, April 25, 1905.*

Maintains that sovereignty (such as Chile claims over Tacna and Arica) is inconsistent with a provisional and temporary control; also that the terms of the

Chile professes to regard the provision for a plebiscite as a mere formality designed to sanction an annexation which was already accomplished, as during the French Revolution, or to extenuate an annexation agreed to beforehand, as has occurred in the nineteenth century. "The result, naturally, has always been favorable to the country which annexed."

Chile cites the treaty of Prague, Aug. 23, 1886, between Prussia and Austria, which stipulated that there should be a plebiscite in favor of the Danish population of Schleswig, but which has remained without effect because the Austrian Government recognized the annexation as an accomplished fact (pp. 28-29).

Chile concludes by asserting her right to execute acts of dominion and sovereignty over Tacna and Arica and to consider them an integral part of Chilean territory, so long as a plebiscite shall not have determined their future state (pp. 30-31).

Finally Chile invites Peru to seek to come to an agreement which shall be based on the common interests and needs of both Republics (p. 31).

IV. *Response of Chile, dated Santiago, June 5, 1905.*

Chile responds briefly, maintaining that the interpretations she has previously given are in accord with international law and follow the practice of European nations.

treaty of Ancon are clear and free from any uncertainty. In that treaty it was expressly agreed that the possession (of Tacna and Arica by Chile) should continue for a definite term, but the sovereignty and dominion were not ceded. The cession of sovereignty was carefully stipulated in the case of Tarapacá, but was reserved in the case of Tacna and Arica, pending the result of the plebiscite (p. 37).

Rejecting the insinuation of Chile that the date of the plebiscite was not fixed by the treaty was fixed by the requirement that it should be held at the end of 10 years counted from the ratification of the treaty, i. e., from March 28, 1884. This was the understanding at the time the treaty was negotiated and approved, and it has invariably been recognized by the Chilean authorities in subsequent discussion.

Peru reviews the history of the negotiations and reiterates the terms of the treaty of Ancon and closes by accepting the invitation to negotiate its execution.

VI. *Response of Sr. Seoane for Peru to Num. 3, Santiago, May 8, 1908.*

Acknowledging diplomatically the courtesy and expressions of good will of Chile and reciprocating the latter, Peru enumerates the five proposals stated in Chile's confidential communication and states that they constitute a "heterogeneous" series of propositions which Peru cannot consider in this connection, because they are in no sense related to the purely political question of the plebiscite which Peru desires to take up directly.

While Peru recognizes the importance of the proposed measures for reciprocal customs ar-

V. *"Num. 3—Confidential"—Ministre del Rel. Exteriores (de Chile), Santiago, March 25, 1908.*

The Minister of Foreign Affairs for Chile addresses the plenipotentiary of Peru in Santiago, evidently after certain oral negotiations have taken place. He says in effect (pp. 48-55):

The Peruvian Minister indicated in his first interview that he wished to proceed at once to the consideration of the Tacna-Arica question, but he of Chile proposed rather to formulate certain distinct proposals designed to develop amicable relations between Peru and Chile. It was true the Peruvian Minister had not agreed to this method of ap-

rangements, for a merchant marine, and for a connecting railroad, she is of the opinion that there is no good ground for discussing them in connection with the matter of the definite possession of Tacna and Arica.

Peru solemnly assures Chile that among the people of Tacna and Arica the sentiment of nationality is conserved and transmitted as vehemently as in the epoch of glory and sacrifice and that all sections of the "Patria Peruana" respond in kind. Once the plebiscite shall have been consummated, there need be no fear that the disappointed country would remain ill disposed, for the arrangement of peoples shall correspond to the true suffrage, not to the pretender Republic.

However, on the one point of the proposed increase of the indemnity to be paid to the other country by the one which shall gain the final sovereignty, Peru makes the fundamental observation that the discussion with which he is charged by his Government contemplates fulfillment of Article III of the treaty of peace, not the modification thereof (p. 77).

Peru would depart from the conditions of the agreement of Ancon only to insure the immediate and definite reincorporation of the Peruvian Provinces of Tacna and Arica with the national territory.

Peru has faith in the outcome of a plebiscite conducted in accordance with her judicial institutions, whereas the attitude of Chile is a confession of the sterility of those efforts which have been made to "Chilenize" the population (p. 78).

proach to the vital question, yet he of Chile might attribute this to the fact that the proposals had been vague and not clearly understood, therefore he formulates them as follows:

1. Arrangement of a commercial convention which shall concede free or reciprocal customs duties to certain elected products of each of the two countries which are consumed in the other.

2. Celebration of an agreement for the development of the merchant marine and the establishment of a steamship line to be paid for or subventioned by the two Governments to develop the commerce of their coasts.

3. Association of the two Governments to carry out by means of their resources and their credit the work of uniting the capitals of Santiago and Lima by a railroad.

4. Arrangement of a protocol which shall establish the form of the plebiscite provided for to determine definitely the nationality of Tacna and Arica.

5. Agreement to increase the amount of the indemnity which shall be paid to the other country by the one which acquires definite sovereignty over this territory.

Peru therefore definitely declines to consider the proposal (to increase the amount of the indemnity).

Peru then takes up three points of the Chilean claims: I. The pretended cession of sovereignty (*la cesión simulada*); II. The direction of the plebiscite; and III. The qualifications of voters (*votantes*).

I.

With regard to the cession of sovereignty. I. (pp. 80-94).

(a) In ancient legislation the substantial and characteristic element of a plebiscite consisted in the will of the people as an expression of sovereignty.

(b) The French Revolution of 1789 condemned conquest by force of arms and reestablished that democratic practice as the only justifiable basis of changes in the existence of States.

(c) Transferred thus to the field of international relations, the plebiscites, whether in favor of France as in the case of Avignon in 1791, or in favor of the unity of Italy in 1818, and all others invariably invoked the decision of the people as the fundamental and judicial title. There has been fraud and abuse by force, but fraud is not a legal factor; it annuls.

(d) After repeating the distinction between the absolute cession of Tarapacá and the provisional and temporary relinquishment of Tacna and Arica by the treaty of Ancon, Peru cites four cases in which the ceding nation (*nación cesionista*) has stipulated for a plebiscite, namely (pp. 83-84), the treaty of Turin, March, 1860; the treaty of Prague, August, 1866; the sequel to the treaty of Prague agreed to at

Chile then proceeds to argue as follows:

He is confident that Peru can not fail to recognize in these proposals as a whole the proof of Chile's desire to insure the most cordial relations with Peru, and Peru can not but be persuaded at least that it is plainly desirable to give to the negotiations in hand all of the amplitude which Chile has indicated. Should they (the negotiations) be reduced to the mere organization of the plebiscite, it might well follow that the country which was disappointed in its expectations of success (*triumfo*) would remain ill disposed, for a time at least, to unite in that friendship which is desired.

"Let us dispose of all causes of eventual uncertainty. Greater confidence, without doubt, will be inspired by negotiations whose purpose is to eliminate existing difficulties and at the same time give pledges of future cordiality."

Chile argues further that a prior agreement in regard to the other matters he proposes will have a beneficial effect on the plebiscite, and this part of his communication closes with the suggestion that "This negotiation as a whole, since it consists of diverse elements which complete and compensate one another, should be treated altogether as an indivisible unit."

Chile then proceeds to discuss the several proposals (pp. 56-66). He passes lightly over the suggestions for a customs agreement, a mercantile marine, and a connecting railway. He introduces the discussion of the protocol in

Vienna on the following day, and in October, 1866, also; and the treaty of Paris, August, 1877.

In each of these cases the ceding power *renounced* claim to sovereignty, whereas in the treaty of Ancon, Peru did not give up her sovereignty over Tacna and Arica, and therefore these cases do not offer parallel conditions (p. 87).

Various negotiations are cited (p. 87-94), to prove that Peru has never ceded her sovereignty over Tacna and Arica, and the discussion closes (p. 94) with the statement that the claim to cession (*cesion simulada*) or conquest should therefore be put aside absolutely.

II.

Continuing his argument under II, Peru takes up the claim of Chile to preside over the plebiscite because she exercises sovereignty over Tacna and Arica. He denies the justice of this claim:

"What is Chile's title to sovereignty?" It rests solely in the treaty of 1883. That treaty provided that the territory should continue to be possessed by Chile during the term of 10 years which ended March 28, 1894. Once that term expired, a plebiscite should decide by popular vote. The termination of the period carried with it that of the conventional right (of possession). Conclusively, then, the precarious sovereignty of Chile ceased in Tacna and Arica (p. 97).

There follows a recital of various expedients proposed by Peru in 1894 to avoid the disagreement which exists.

Peru recites the precedents affecting the direction of plebiscites in 1860, 1866, and 1877, and draws the conclusion that they

regard to the plebiscite by referring to the withdrawal of the Peruvian Legation in 1901 and the invitation extended by Chile in 1905 for a resumption of relations.

He then comes to the point (p. 60).

The treaty of 1883 did not omit a definition of the conditions which should govern the holding of the plebiscite because of oversight but rather because of the implicit recognition that the proceeding agreed to could *not be any other than that of the plebiscites comprised in the history of international law.*

Chile, however, is not disposed to stress the rights which Article III of the treaty gives her, nor to hold exactly to the terms of the law as laid down by publicists and diplomatic precedents, provided always that Peru will renounce extreme pretensions, which would certainly frustrate the purpose of the negotiations.

Chile argues (pp. 61-62) that there is a difference between the right to vote in this matter of *international* import. "There is, therefore," says Chile, "no doubt but that there shall be called to exercise the right of suffrage all the competent inhabitants of the

agree in the one particular, the *modus operandi*, according to which it would follow that only residents of Tacna and Arica (tacneños y ariqueños) could serve as officials. Holding that Chile's continuing in control has been illegal since March 28, 1894, Peru denies her any right to the presidency of the plebiscite.

"Rights do not emanate from that which is illegal."

Resting her case in the fundamental principles of justice, Peru draws the logical conclusion that both Republics must have identical rights of intervention and identical positive securities, to the end that the plebiscite shall express, according to the testimony of both, the true verdict of the people (p. 104).

territory—not only those nationals of one or the other country concerned who may have established their residence in the territory and who are free of all disabilities but also those resident aliens (*estranjeros*) who are in the same conditions."

"The preference" (*voluntad*) of the aliens should be consulted in the plebiscite as much because it is implicitly recognized in the treaty in the phrase "popular vote" (*votación popular*) as because it is neither equitable nor reasonable to deprive them of participation in an affair (*consulta*) which shall determine the fate of the territory where they have established their interests, have raised their families, and have contributed in a very important degree to prosperity by their fruitful and persevering labor.

Furthermore, Chile claims that, inasmuch as she is exercising sovereignty in Tacna and Arica, it is her exclusive duty to appoint the personnel which shall preside over the election, equally in the registration of voters as in receiving the votes.

III.

Regarding the right to vote, Peru holds that it pertains solely to native sons (*regnicolas*). Aliens, so long as they are not naturalized, fail to secure political rights, and their personal status remains unaffected by any change of territorial dominion.

The suffrage in the case of the plebiscite is of a special character, transcending the participation of the citizen in the direction of public affairs, since it shall determine the sovereignty that shall rule the territory. The vote should be denied to the co-nationals (Peruvians) not born in Tacna and Arica.

The discussion of this item concludes with the expression that Peru will assuredly not object to giving representation to Peruv-

ica. How much more evidently then to aliens. To grant the latter the vote would be to give them equal rights with the natives (*duenos*) to empower them to denationalize the citizens and to violate that neutrality which is imposed upon them by law in case of any international dispute.

These points are sustained by quotations from Chilean authorities (pp. 107-112) and by precedents drawn from the execution of the treaties of Turin, Vienna, and Paris (pp. 112-114.)

Finally Peru recites Chile's statement that the negotiations of the treaty of Ancon could have had no other proceedings in mind for the plebiscite than that of those plebiscites which have become incorporated in the history of international law, and, putting aside as untenable the idea that the Government of Chile under President Montt could have designs to transform the proceedings into a burlesque by fraud or force, Peru points out that the only precedents are those of Nice, of Savoy, of the Italian Provinces, and of the Island of St. Bartholomew, in which rules were laid down in advance by the local authorities, as has been set forth in detail in the argument (pp. 100-101 ante). On this basis Peru agrees with Chile on this point.

Peru closes by inviting Chile to continue the conferences till an agreement shall be reached, by applying the precepts of diplomatic antecedents according to law and justice to the disputed clauses of the Billinghamst-La Torre protocol (p. 118).

ian nationals and likewise to citizens of other nations.

Referring to the fifth article of the Chilean proposals, Chile suggests that the amount to be paid to the country which shall lose the sovereignty of Tacna and Arica shall be fixed between two and three millions of pounds sterling. She argues that this payment should be combined with that of the indebtedness for the international railroad and that the matter would thus be robbed of the character of an indemnity. The result would be a solution of the problem with the least possible bitterness.

Chile concludes with the expression of the hope that Peru will agree that the group of proposals is well calculated to settle the difficulties between the two countries and to reestablish cordial relations between them.

**B. OBSERVATIONS ON THE NOTE OF H. E. SR. SEOANE OF
MAY 8, 1908, BY ALEJANDRO ALVAREZ, COUNSELLOR,
FOREIGN OFFICE, CHILE.**

(Pp. 123-227.)

(For the note of Sr. Seoane see preceding excerpts.)

The "Observations" introduce the subject by a résumé of the historical facts, beginning with the treaty of Ancon, October, 1883. With reference to the third article the Observations state:

"The provinces of Tacna and Arica remained subject to our (Chilean) sovereignty, and consequently to our legislation and authority, until a plebiscite, which should be celebrated 10 years after the ratification of the treaty, should decide to which of the two nations they would definitely belong.

* * * * *

"Shortly after the expiration of the ten-year period both countries began negotiations to arrive at an agreement over the terms of the plebiscite, but without result."

In 1901 Peru withdrew her diplomatic representatives from Chile and sent a communication to foreign chancelleries charging Chile with having refused to comply with the treaty of Ancon.

The chancellery of Santiago, which throughout the negotiations had with the highest purpose of conciliation sought to arrive at an amicable agreement with Peru, invited her on March 15, 1905, to reopen diplomatic relations. In order to avoid a repetition of futile negotiations, the invitation was issued with the object of procuring an agreement which should be based on the interests and advantages of both Republics since "on the ground, which is that of the actual interests of the peoples, the agreement between Chile and Peru would be immediate, ample, and enduring."

The Government of Peru having accepted the invitation and accredited its minister plenipotentiary, there followed the exchange of notes of February 18 and March 15, 1905, and of March 25 and May 8, 1908.

PERU.

Peru on her part alleges (p. 128):

1. That the plebiscites which are recorded in history are not to be interpreted in the manner claimed by Chile.

CHILE.

On the part of Chile the controversy came to rest on the following bases (pp. 126-127):

1. The negotiations of the treaty of Ancon, in stipulating that Tacna and Arica should remain under the sovereignty of Chile subject to a plebiscite which later should decide the final nationality of these territories, gave to this proceeding the value and

2. That, assuming that the claim of Chile as to the interpretation of historical precedents were correct, the plebiscite provided for by the treaty of Ancon was of very different character from those which had been agreed to up to that time; and that in consequence it must be lived up to rigorously. Peru understands that this means that Chile should not preside over the plebiscite and that the right of suffrage should belong only to the original Peruvians of Tacna and Arica. These propositions are equivalent to the assumption that a mere formula, which assured in advance the triumph of Peru, was agreed to (by the treaty of Ancon).

3. That since March 28, 1894, the date on which the plebiscite should have been held, our country (Chile) has ceased to exercise sovereignty over Tacna and Arica and has continued to hold the territory unjustly.

scope attributable to it both by the history of diplomacy and by international practice. As the statesmen they were, they adopted the formula of the plebiscite, not in its theoretical or judicial meaning, but saw rather in it the proceeding best adapted to the difficult conditions through which the Government of Peru was passing; that is to say, a practical and honorable formula to facilitate the annexation of those territories and make it acceptable to the people of the vanquished state (Peru).

2. The Government of Chile, in its desire to arrive at an amicable solution with Peru, has constantly manifested throughout the negotiations its desire not to push to an extreme the exercise of those rights which were in fact conferred upon it by the treaty of Ancon, provided always that the Government of Peru should show itself disposed to agree to an outcome which should solidly and permanently assure peace and reestablish cordial relations between the two countries.

3. In the judgment of Chile the best method to secure these results consists in making agreements which may consult the mutual political and economic interests. One of these agreements is the celebration of the plebiscite upon bases which shall be more equitable than those proposed by Peru, designed to insure the universality of the suffrage and the impartiality of the count, and which may, therefore, result in the triumph of Peru, if such shall be the decision of the popular vote.

The advocate of Chile then proceeds to consider each of the three points which he regards as the basis of discussion between Chile and Peru.

I.

The discussion of the purpose of a plebiscite in the light of historical precedents occupies pages 129-149. It is introduced by a quotation from Sr. L. A. Vergara, Minister of Foreign Affairs for Chile, who, in his note of March 15, 1905, re Tacna and Arica, took the ground stated above as the Chilean contention; namely, that all the international plebiscites held during the last two centuries have been nothing more than a means of sanctioning a conquest already accomplished or of facilitating an annexation recorded beforehand.

The idea of a plebiscite originated during the French Revolution as a consequence of the principle of popular sovereignty.

The National Convention of 1792, nevertheless, sought to effect a compromise between the dogma of sovereignty and the necessity of extending the frontiers of France. All other principles, whatever their importance, were subordinated to the requirements of foreign politics. Various proceedings were employed according to circumstances. In case the region to be annexed desired to unite with France, the plebiscite was understood to be a mere formality; and in the contrary case the popular will was coerced, if necessary, by force.

The annexation of Nice and Savoy to France was an example of the former class. It was not a conquest, but an act of fraternity by which two brother peoples were united in a single state.

The Provinces on the left bank of the Rhine, and above all Belgium, presented examples of the second class. France did not hesitate to occupy these countries by armed forces, and French officials resorted to extreme measures to falsify the popular vote.

"Thus the lesson taught by those plebiscites which were held during the French Revolution is suggestive."

"The application of the doctrine of popular will can not be loyally followed, especially after a war of conquest, when the purposes of the conqueror are opposed to it." Carnot, in 1793, summed up the principle which is superior to the popular will; namely, "to prevent that another people shall lay down the law for us."

The plebiscite fell into disuse until Napoleon III revived it to justify the coup d'état of 1852, and induced some other governments to adopt it in certain cases.

The plebiscites already enumerated and others are then discussed separately (pp. 134 et sequi). They are: The union of the Italian States; the annexation of Nice and Savoy to France; the annexation of Lombardy and Venice to Italy; the annexation of Schleswig to Prussia; and the retrocession of the island of Saint Bartholomew to France.

After reciting the history of Schleswig, including a quotation from Bismarck to the effect that it was useless to consult the popular will since the security of frontiers could not be permitted to depend on a popular vote, the Chilean advocate lays stress upon the example of Prussia and Austria as of transcendental importance in international affairs.

Thus the Chilean advocate deduces from these precedents four conclusions (pp. 143-144) :

- (a) The proceeding has been purely *pro forma*;
- (b) The conduct of the plebiscite has been under the exclusive direction of the power that exercised sovereignty over the ceded territory;
- (c) The suffrage was confined to nationals (*regnicolas*);
- (d) In those cases where it was known beforehand that the plebiscite would give an unfavorable result, it was not held.

II.

The advocate of Chile proceeds to argue that the plebiscite, which should eventually determine the nationality of Tacna and Arica, was agreed to only in the light of historical precedents (whose bearing has been summed up in what precedes) and that on the part of Chile it was a measure proposed simply to permit the Peruvian people to accept the practical cession of those territories without too gravely wounding their patriotic feeling (pp. 150-160).

The argument is based on the demands of Chile in the first and subsequent negotiations, 1880-1883; and also on the conditions surrounding the negotiations themselves and the public sentiment in Chile at the time.

At the first futile conferences, held on board the *Lackawanna*, October, 1880; Chile demanded the cession of Tarapaca, and the retention of Moquegua, Tacna, and Arica. Two years later, when Lima had been occupied, the Peruvian army dispersed, and the Peruvian Government overthrown, Chile was in a position reasonably to impose more rigorous conditions of peace. The cession of Tacna and Arica was required as a *sine qua non* during the negotiations from 1881 to 1883.

When Gen. Iglesias had been invested by the assembly of Cajamarca with the powers of president, his aims coincided with those of Chile in so far as they had to do with the establishment of an enduring peace, involving the cession of territory, in the manner that would assure to the new President of Peru the support of his fellow citizens. The difficulty of reconciling the requirements imposed by Chile with the sensibilities of the Peruvians was met by the expedient of the plebiscite. Thus the public in Peru might entertain the hope that Tacna and Arica would remain only temporarily under the sovereignty of Chile, whereas the Government of Chile calculated that 10 years would suffice to convince the Peruvians that the Provinces should remain a part of Chile, "without a plebiscite or through a mere formality" (p. 156).

"It is, therefore, not, as Peru now maintains, the fact that her resistance to the cession of Tacna and Arica caused Chile to desist from her proposal of annexation; nor did Chile agree in all seriousness to a plebiscite, without regard to the diplomatic precedents. It would have been senseless had the Chilean negotiators, who regarded these territories as an indispensable pledge of future peace, renounced the proposal to acquire sovereignty over them simply because of the purely passive resistance of the Peruvian representatives."

Further support for these arguments is found in the treaty with Bolivia, signed April 4, 1884, by which Bolivia surrendered to Chile

her coastal Provinces, as was necessary in order that the Chilean territory, including Tacna and Arica, should be contiguous.

In support of the argument that the plebiscite was accepted in its historical and purely formal intent, attention is called to the similarity of phraseology between Article III of the treaty of Ancon and the terms of the treaties of Turin, 1860, and of Paris, 1877 (p. 160).

After reciting evidence of the care with which the treaty of Ancon was drawn and thus excluding the idea that there could have been any oversight, the conclusion is reached that the postponement of a decision as to the conditions which should govern the holding of the plebiscite was due to a deliberate recognition of the purely formal character of the provision (p. 163).

Don Luis Aldunate, one of the negotiators of peace, in his character of Minister of Foreign Affairs, is quoted to the effect that "at that time (1883) no one doubted that to give Chile possession of those territories for 10 years was synonymous with giving her sovereignty over them."¹

III.

The third point at issue is the question of the right of Chile to continue to exercise sovereignty over Tacna and Arica from and after the expiration of the term of 10 years, which came to an end in March, 1894.

The advocate of Chile does not, however, proceed at once to a consideration of that issue, but repeats in the form of a criticism of the views of Sr. Seoane the Chilean interpretation of the antecedents and purpose of the proposed plebiscite (pp. 166-172).

He then takes up the question of sovereignty, stating in effect (p. 172): The plenipotentiary of Peru (Sr. Seoane) attributes such importance of the term of 10 years, as stipulated in the treaty of 1883, that he would maintain that since March, 1894, our country has ceased to be sovereign over Tacna and Arica and that sovereignty has passed by full right to Peru.

This claim has for its sole object the purpose of furnishing a basis for the thesis * * * that our country (Chile), since it does not exercise sovereignty over Tacna and Arica, can not preside over the operation of the plebiscite. The term fixed by the treaty of 1883 does not limit the period of Chilean sovereignty, but rather fixes a minimum of 10 years, within which the popular vote could not be taken.

Here the advocate of Chile repeats the arguments based on the phrases of Article III, "the plebiscite shall decide whether the territory shall remain *definitely* under the dominion of Chile or *continue* to be part of the territory of Peru." He claims that Peru ceded the absolute sovereignty without any limitation in regard to its *exercise* and limited in duration only in the event that a plebiscite should decide that it must be returned to Peru.

It follows in the judgment of the advocate that the expiration of the 10-year term did not in any way terminate the sovereignty of Chile over Tacna and Arica not reestablish that of Peru. The continuation of Chile in authority is therefore far from being illegal (pp. 176-178).

¹ Los tratados de 1883-84, Santiago, 1900, p. 215.

IV.

The advocate for Chile reviews the argument for a plebiscite according to the Chilean program and expatiates on the cordial good will of Chile toward Peru (pp. 178-186).

"The group of arguments thus far presented demonstrates patently the right which Chile possesses to maintain that the Provinces of Tacna and Arica were ceded to her by the agreement of Ancon; that the stipulation of the plebiscite was a mere form; and that consequently, like all others which have been carried out up to the present, it should be held under conditions which may yield a result favorable to annexation."

Proceeding from this basis, and in conformity with the principles of common law (*derecho público*) and with diplomatic precedents, the act (plebiscite), in case it be held, should be carried out under the exclusive direction of the Chilean authorities; and in order to achieve a favorable result the right to vote should belong only to Chileans who reside in Tacna and Arica, because they are nationals of the country which exercises sovereignty and are disposed to vote in favor of annexation.

Nevertheless, the Government of Chile, aspiring to rise to the same level of conduct as that adopted by the European nations with their rivals in armed combat—that is to say, seeking to cause the past to be forgotten and future interests to be unified—has abstained carefully, since the treaty of 1883, from alleging that that agreement involved a cession of territory; and, without abandoning in the least its purpose of incorporating Tacna and Arica under its sovereignty, has sought to secure this result by means entirely consistent with tranquillity and friendship.

In support of this latter statement of friendly purpose the advocate of Chile recites the offers of Chile in 1888, 1889, and 1890 to pay Peru 4,000,000 pesos more than the sum agreed to, in case Peru would consent to the immediate annexation of Tacna and Arica, and argues that Chile did not object to enter into negotiations for the celebration of the plebiscite, provided that it be held under those conditions in which she might have complete faith of success, yet which might include the possibility of a triumph for Peru.

Those conditions should be that the plebiscite should not be held in disregard (*desmedro*) of the authority of Chile, and that the vote should, in conformity with the Treaty of Ancon, be truly popular; that is, that the right of suffrage should be accorded not only to resident Chileans and Peruvians, but also to foreigners who had established themselves there.

Chile has further refrained from raising any question regarding the majority vote which should be necessary to return the Provinces to Peru. In this matter the situation of the two countries is radically different: Chile exercises full sovereignty over the country and Peru has to her account nothing more than a mere expectation of recovering it. Chile, therefore, has a perfect right to require that a mere majority should not have the power to deprive her of the sovereignty, but that a much higher proportion of the votes should be required. On this point reference is made to Lieber: "*De la valeur des plébiscites dans le droit international*" (*Revue de Droit International et*

de Législation Comparée, T. III, 1871, p. 173) and also to Thudichum, in *Revue de Droit International et Législation Comparée*, T. II, 1870, pp. 771-772.

Referring further to the liberal attitude taken by Chile toward Peru in the payment of claims and cancellation of debts, the argument along these lines closes with the expression of Chile's aspiration to secure in the north a neighbor who will not be a persistent enemy but rather a sister nation which will know how to forget the events of the past in order to enter upon the great political and economic problems which are of interest to both.

V.

In this section of the observations on the note of Sr. Seoane the Chilean advocate reviews the attitude of Peru unfavorably in contrast to that of Chile; repeats the proposals for an agreement on the basis of mutual interests not related to the treaty of Ancon; restates the conditions under which the plebiscite should be held, if at all; and discusses again the question of suffrage (pp. 186-210).

The restatement of the argument, though accompanied by reflections on the positions taken by Peru and on the arguments presented by Sr. Seoane, does not present any new principles. It may be noted, however, that Chile urges that the right to vote in the plebiscite should be extended to foreigners (i. e., to other nationals than Chileans and Peruvians), because foreigners would be neutral and best fitted to estimate which of the two countries ought finally to exercise sovereignty over the territory (p. 209).

Commenting upon the suggestion of Sr. Seoane that the protocol "Billinghurst-Latorre" should be taken as the basis of a convention over the plebiscite, and refusing absolutely to consider it, the advocate of Chile says (pp. 211-212): "To assume, as is proposed by Sr. Seoane, that the diplomatic precedents of the institution of the plebiscite should be interpreted 'according to principles of law and justice' is equivalent to requiring that these precedents should be regarded, not in the light of diplomatic history, which is the only point of view from which they were regarded by the negotiators of the treaty of Ancon, but rather in a purely ideal sense, which Peru assumes to be favorable to her interests."

VI.

The final section of the "Observations" deals with the state of the negotiations at the time the advocate wrote, 1908, and with the situation arising from the fact that Peru had refused to consider the Chilean proposals.

The attitude of the chancellery of Lima is truly peculiar, inasmuch as it not only declines to take account of the Chilean proposals, but declares it will immediately make them public. It might be inferred that Peru wished to put an end to negotiations with Chile. Chile might, therefore, consider herself freed from all her propositions and recover complete freedom of action; but still persisting in her desire for friendly relations trusts that Peru does not desire to shut the door upon a future solution.

Still, Chile does not wish to pursue sterile negotiations of a more academic than practical character.

Examining the international situation on the assumption that Peru coincides with Chile in desiring an enduring agreement, and assuming also that Chile would not regard the negotiations as closed and the Provinces of Tacna and Arica forfeited to her without other obligation than that she should pay Peru 10,000,000 pesos in silver, there still remain between Chile and Peru directly contradictory interests.

Peru desires to reincorporate these Provinces under her sovereignty and Chile, the actual sovereign, desires that they should remain definitely incorporated in her dominion.

This controversy, considering the bases from which Chile started out in the negotiations and the purpose with which she has pursued them, can not be submitted to arbitration. Although the traditions of Chilean policy and action favor arbitration, her Government does not fall into the error of considering it a panacea for all international conflicts. The matter of Tacna and Arica is one of vital importance, since it concerns the security of her northern frontier and her sovereign rights. Chile can not admit that there is any doubt about her actual dominion over Tacna and Arica or her right as sovereign to preside over the execution of the plebiscite. Therefore these matters can not be arbitrated.

Equally impossible is it to admit that arbitration might decide the extension of the suffrage to Chileans and foreigners, because to do so would be equivalent to the absurd admission that Chile had agreed to a pretence of a plebiscite in favor of Peru.

Chile holds, in fact, that if an arbitrator should intervene, he should be not a judge who would decide according to certain solemn judicial principles (*solemnidades juridicas*) but rather a group of persons well informed in regard to the political conditions (*conveniencias*) of these territories. These persons could not be any others than the inhabitants of Tacna and Arica, including the foreigners, who, as mediators between Chileans and Peruvians, would have the most active interest in weighing the problem without passion, without the distinctions drawn by lawyers and only on the basis of present and future convenience (pp. 212-218).

Inasmuch as the actual conflict, by reason of its origin, antecedents, and character, can not be submitted to the judgment of an arbitral tribunal, there remains but one solution possible.

In accordance with a *strictly judicial judgment* an agreement between the parties to the treaty of 1883 has become impossible, and this impossibility carries with it the abrogation of the particular clause, though not of the whole treaty. This conclusion follows because the clause, in view of its object and the purpose of the negotiators, is not essential to the substance of the treaty. As a result Chile would remain definitely in sovereign possession, with no other obligation than that of paying Peru 10,000,000 pesos.

According to *political criterion* the lapse of time creates, in favor of the country which exercises authority over a territory, a right which becomes established, in course of a period that can not be precisely determined because it varies according to circumstances, and assumes a permanent character. This follows from the very nature

of sovereignty and from the development of interests, which may assume such importance as to constitute an accomplished fact.

If it were not true that the lapse of time confers sovereignty, and if in the name of ideal justice the attempt were made to vindicate all the claims founded in historic rights, it would be necessary to make over the map of the world completely and replace it by one which would assuredly be more artificial and unjust (p. 221).

Precedents for the definite assertion of sovereignty by Chile over Tacna and Arica are found in the cases of the concession given England over Cyprus by Turkey, June 4, 1878, and in the rights given Austria over Bosnia and Herzegovina by article 25 of the treaty of Berlin. Austria's course in gradually consolidating her sovereignty over Bosnia and Herzegovina, and in finally annexing those territories is cited as one which has not gravely preoccupied the attention of the great powers. Nevertheless, Chile does not regard it as a case parallel to that of Tacna and Arica because her rights there include full sovereignty, the question concerns two countries only, and the treaty of 1883 provides for an indemnity.

Finally, looking at the question *as statesmen*, guided by diplomatic precedents and political conditions rather than by rigorous precepts of private rights, Chile may invite Peru to modify the treaty of peace in so far as it concerns the plebiscite, being able to offer her in exchange an adequate indemnity. Precedent for this action may be found in the abrogation of article 5 of the treaty of Prague. On this point Chile quotes Holtzendorf (Rev. de Droit Intern. et de Lég. Comparée, T. X, 1878, pp. 580-586). (pp. 223-225.)

The "observations" close with reiteration of Chile's desire to establish harmonious relations with the neighboring countries.



